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CONTENTS

	PAGE		PAGE
NOTES OF THE WEEK	202	CORRESPONDENCE	213
ARTICLES		REVIEWS	214
Justices Old and New	205	PERSONALIA	214
Chief Constables' Annual Reports	206	NEW COMMISSIONS	214
Judex Artifex	207	LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS	215
WEEKLY NOTES OF CASES	210	PRACTICAL POINTS	216
MISCELLANEOUS INFORMATION	212		

REPORTS

Court of Criminal Appeal

R. v. *Clarke*—Criminal Law—Suspected person 193

King's Bench Division

Turbutville and Another v. *West Ham Corporation*—Education—Teachers' remuneration—War service pay made up to civil remuneration—Right of teachers to difference between service pay and 1945 Burnham scale remuneration 195

Court of Appeal

Redpath v. *Redpath and Milligan*—Divorce—Adultery—Onus of proof—Charge of adultery by husband—Plea by wife that adultery committed without her consent during a rape on her by the co-respondent 199

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4. **Clergy Rest Houses.**

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APPLICATIONS are invited from qualified Solicitors, not exceeding 45 years of age, for the permanent appointment of Assistant Solicitor at a salary within Grade APT IX of £850 per annum, rising by one increment of £50 to £900, plus London "weighting."

The person appointed will be required to devote the whole of his time exclusively to the service of the Council and will not be allowed to engage in private practice or undertake any work outside the Council's service except with the previous consent in writing of the Council.

Candidates must have had considerable experience in advocacy, conveyancing, land acquisition, and the general legal work of a local authority.

The appointment will be subject to satisfactory medical examination by the Council's Medical Officer; to proof of age by production of birth certificate; to the National Scheme of Conditions of Service as adopted by the Council; and to compliance with the provisions of the St. Marylebone Borough Council (Superannuation) Acts, 1908-1936, and any modifications thereof. The appointment will be terminable by three months' notice on either side.

Forms of application are not issued, but candidates must write stating age, professional qualifications, present position, particulars of past appointments and all other essential information.

Applications must be accompanied by the names of not more than three persons to whom reference as to character and ability can be made, and must be delivered to the undersigned not later than *Saturday, April 29, 1950.*

The Council's Standing Orders provide that canvassing shall disqualify an applicant.

S. J. RUTTY,
Town Clerk.

Town Hall,
St. Marylebone, W.1.
April, 1950.

COUNTY BOROUGH OF PRESTON

Appointment of Second Assistant to Clerk to the Justices

APPLICATIONS are invited for the appointment of a second assistant to the Clerk to the Borough Justices.

Applicants should have general magisterial experience. Shorthand and typewriting essential.

Salary in accordance with the Clerical Division of the National Scale (£395 × £15—£440).

Applications stating full details, age and experience, with two testimonials, to be sent to the undersigned.

W. A. L. COOPER,
Clerk to the Justices.

Magistrates' Court,
Lancaster Road,
Preston.

CITY AND COUNTY OF KINGSTON upon HULL

Appointment of Female Probation Officer

APPLICATIONS are invited for the above appointment.

Applicants must not be less than 23 years, nor more than 40 years of age, except in the case of whole-time serving officers and persons who have satisfactorily completed a course of training approved by the Secretary of State.

The appointment will be subject to the Probation Rules, 1949, and the salary will be in accordance with the prescribed scales.

The successful candidate will be required to pass a medical examination.

Applications, supported by three recent testimonials, should reach the undersigned not later than Monday, May 15, 1950.

T. A. DOUBLEDAY,
Secretary to the Probation Committee.

Law Courts,
Alfred Gelder Street,
Hull.

BOROUGH OF SOUTHGATE

Appointment of Second Assistant Solicitor

APPLICATIONS are invited for the appointment of a Second Assistant Solicitor on the Established Staff of the Town Clerk's Department.

The salary will be in accordance with Grade VA of the A.P.T. Division of the National Scheme of Conditions of Service, namely at the rate of £550 per annum rising by annual increments to £610 per annum plus the appropriate "London Weighting" allowance.

Applicants should possess experience in Local Government work, Conveyancing and Advocacy, and must be admitted Solicitors.

The appointment will be subject to (1) the provisions of the Local Government Superannuation Act, 1937 (2) the successful candidate passing satisfactorily a medical examination and (3) termination by one month's notice in writing on either side.

Application forms for the above appointment may be obtained from the Town Clerk, Southgate Town Hall, N.13, to whom the completed forms should be returned by not later than first post on May 6, 1950.

Canvassing either directly or indirectly will be a disqualification.

GORDON H. TAYLOR,
Town Clerk.

Southgate Town Hall,
Palmers' Green,
N. 13.

MIDDLESEX COMBINED PROBATION AREA

Appointment of Male Probation Officer

APPLICATIONS are invited from serving officers for the position of male Probation Officer. Salary according to the Probation Rules, 1949, including £30 London Weighting, and subject to superannuation deductions.

The successful applicant may be required to pass a medical examination.

Application forms from the Principal Probation Officer, 25, Victoria Street, (South Block), Westminster, S.W.1., to be returned to the undersigned within seven days. (Quoting G.856 J.P.). Canvassing disqualifies.

C. W. RADCLIFFE,
Clerk to the County Probation Committe.

Middlesex Guildhall,
S.W.1.

BOROUGH AND DISTRICT ELECTIONS FOR 1950

CALENDAR

By R. N. HUTCHINS, LL.B.

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NOTES of the WEEK

Constructive Desertion

In matrimonial cases where the husband has not actually left his wife and has not therefore obviously deserted her, but has driven her from the matrimonial home, the convenient description of constructive desertion is often applied. Some of these cases are simple, others are on the border-line and difficult to decide. The principle that a man is presumed to intend the natural consequences of his acts is often invoked.

Because these cases are sometimes puzzling, observations of Denning, L.J., in a recent case, are welcome, as they explain clearly the true application of the doctrine.

The case was *Hosegood* v. *Hosegood* (1950), *The Times*, March 25, before the Court of Appeal. The husband's appeal against the dismissal of his petition on the ground of his wife's desertion was allowed. The husband was an income tax official, and was stationed in different places from time to time. He wished his wife to live with him, but she went to live with her mother and he was able to visit her at week-ends only. Eventually this led to so much disagreement that his wife refused to receive him at week-ends. Bucknill, L.J., said that the wife had established no just cause for refusing to live with her husband. If his conduct had been such as to justify her in refusing to live with him that was due to her neglect of him, and any constructive desertion by him had been remedied by his persistent expression of his desire to live with her again.

Intending the Natural Consequences

In a concurring judgment, Denning, L.J., observed that "constructive doctrines" led to trouble. He referred to two schools of thought on the question of constructive desertion. One school, while admitting that a man might be guilty of desertion because his conduct was such that it might be inferred from it that he intended to drive his wife out, also admitted that if in truth the facts negatived any intention to bring the married life to an end, the courts should not attribute it to him. Thus an habitual drunkard or an habitual criminal might behave so as to force his wife to leave him, though he was devoted to her and certainly did not wish her to leave. This would not be desertion in the opinion of that school of thought.

The other school of thought did lip service to the necessity for such an intention, but said that even if the husband had no intention in fact to bring the married life to an end, yet he was *conclusively presumed* to intend the natural consequences of his acts; and if his conduct were so bad or so unreasonable that his wife was forced to leave him, then he must be presumed to intend her to leave and he was guilty of constructive desertion, however much he might in fact desire her to remain.

In his (Lord Justice Denning's) opinion, the views of the first school were logically unanswerable. When people said that a man must be taken to intend the natural consequences of his acts they fell into error: there was no *must* about it; it was only *may*. If, on all the facts of the case, it were not the correct inference, then it should not be drawn.

The Choice of a Home

In this case, said Denning, L.J., the husband was not guilty of deserting his wife. But there remained the question whether she had deserted him. That depended on the vexed question where the home should be. The wife insisted that the home was to be with her mother, whereas the husband wished it to be at the place where he was stationed, in particular at the town where he had been ever since 1942. It was that conflict which had led to the separation. He went for week-ends to the town where his wife and mother were, the husband and wife quarrelled about the matter so much that she eventually refused to have him there at all. Was that desertion on her part?

The husband had no legal right to require his wife to come to the town where he was stationed. Those matters, as he had said in *Dunn* v. *Dunn* [1948] 2 All E.R. 822, were to be settled by agreement—by give and take—and not by the imposition of the will of the one over that of the other.

The only qualification which he would make to what he had said in *Dunn* v. *Dunn* (*supra*) was that there were cases where each party was reasonable from his own point of view, but was unreasonable in not giving proper weight to the other's point of view. Each must know full well that if he or she did not give way the married life would be brought to an end; and if each unreasonably persisted each might well be presumed to intend to bring it to an end. He saw no reason why the court should be forced to choose between them and say that one only was a deserter.

In the present case, however, the wife had been the only unreasonable party. She most unreasonably put her own interests before those of her husband even when it became obvious that, if she continued to do so, it would mean the end of the marriage. The only proper inference was that she intended to bring the married life to an end. She herself was, therefore, guilty of desertion.

The proposition that both parties may be guilty of desertion may seem surprising at first sight, but, as the learned Lord Justice has shown, it may be sustained as good law in certain circumstances. So far as expediency is concerned, it would doubtless be conceded by most people that where a marriage has completely broken down, and there is no prospect of reconciliation, it is better that the court should be able to make an order than that it should have to dismiss the case.

Case Stated by Magistrate : Enforcement of Challenged Order

In *Blyth* v. *Lancaster Appeal Committee* [1944] 1 All E.R. 587, a defendant appealed to quarter sessions unsuccessfully against conviction, and then applied to quarter sessions to state a case for the High Court upon a point of law. Where a defendant has been convicted and imprisoned by a court of summary jurisdiction, s. 3 of the Summary Jurisdiction Act, 1857, provides that he must be released pending the hearing of the case stated, but, as Hallett, J., showed in *Blyth's* case, there is no similar provision where his case goes forward on a point of law from quarter sessions. If in gaol he stays there. *Blyth's* case seems to be the only case of this century in which the High Court or a judge of the High Court has had to pronounce upon any of the questions which arise, or may arise, in regard to enforcement of an order of magistrates challenged by case stated. In *Kendall* v. *Wilkinson* (1855) 24 L.J.M.C. 89, Lord Campbell, C.J., said that "in the vast majority of cases it would be exceedingly improper for justices to grant a warrant after notice of appeal," but that is different. There is next to no authority upon the question whether an order of justices, in most of the cases where it has been made, can be enforced as a matter of law, pending a decision of the Divisional Court on a case stated. *Kendall* v. *Wilkinson* was an action of trespass against a magistrate, arising out of the enforcement of a bastardy order ; its relevance to the question before the Court in *Blyth's* case was examined there, as were other early cases more or less bearing on that question. Hallett, J. does not seem there to have mentioned the case of *ex parte Musters* reported in *The Times* of November 6, 1893, and not in any of the law reports, which is the only case given in *Stone* relating to enforcement of an order of justices pending the hearing of a case stated on that order. The Divisional Court there said that it would be "improper" for the justices to enforce such an order, but refused a rule for prohibition. *The Times* does not make it clear what was the nature of the order sought to be enforced in *Musters'* case; except that it was under the Married Woman's Property Acts, and the husband was apprehensive of being committed for failure to comply with the order he was challenging. The impropriety in such a case, or where, for instance, the justices have convicted and imposed a fine which has not been paid, and are asked for a warrant of commitment, is evident : this would be within the principle of what Lord Cockburn said in *Kendall* v. *Wilkinson*, on the subject of a decision on which an appeal was pending. In these cases the enforcement of the order of justices depends upon a subsequent step by the justices, who ought not to take that step until they are sure that their first decision is right. The same can be said where a case is stated for the opinion of the Divisional Court in matters where civil debt procedure before justices is authorized by s. 35 of the Summary Jurisdiction Act, 1879. Here a judgment summons and, if necessary, a warrant is the appropriate method of enforcing the order of justices to pay (rules 36 *et seq.* of the Summary Jurisdiction Rules, 1915), so that once more the principle of *Kendall* v. *Wilkinson* and *ex parte Musters* applies, and magistrates ought not to grant such a summons until the case stated upon their order under s. 35 has been determined. There is, however, yet another group of cases with which the *Justice of the Peace and Local Government Review* is often concerned, namely those under the Small Tenements Recovery Act, 1838, as applied by many modern statutes, particularly the Housing Acts, under which the procedure of the Act of 1838 is available to local authorities for getting tenants out of their houses. By the Small Tenements Recovery Act, 1838, a warrant addressed to the constables issues as of right, where the justices are satisfied of certain formal preliminaries ; it is now settled, in accordance with earlier cases noted in *Stone*, that the magistrates have no discretion in the matter : *Shelley* v. *L.C.C.* ; *Harcourt and Others* v. *L.C.C.* [1948] 2 All E.R. 898 ; 113 J.P. 1 ; *R.* v. *York Justices, ex parte York Corporation* (1949) 113 J.P. 168 ; *Stott* v. *Smith* (1949) 113 J.P.N. 502. In *Ramsbottom* v. *Snelson* (1948) 112 J.P. 160 a cottager against whom a warrant had been obtained challenged it by case stated, upon the allegation that his occupation of the cottage had not been that of a tenant, but that of a servant. Lord Goddard in that Divisional Court made sarcastic remarks (*ibid.* p. 162) about the man's having fought a "point of high juristic principle, of no possible benefit to him or anybody else," but in so speaking overlooked the fact that in such cases the warrant for possession is in practice allowed to remain in abeyance where a case is stated, so that the discharged servant against whom it had been issued secured substantial benefit, namely several months longer occupancy of his cottage, while he was looking for fresh work and for somewhere else to live. The question is, however, whether this practice is necessary, and indeed whether it is strictly legal. Subject to certain reservations, the warrant issues as of right, and its form is statutory. The constables are required to turn out the tenant (strictly ex-tenant) and to put the owner into possession. Suppose the owner insists that the constables shall execute the warrant ? This is not a case like those above cited, where the magistrates have something more to do, nor have they power to hold up the warrant. Upon the statutes, we cannot see that the constables have an answer. It would be a good thing if these doubts could be set at rest by statute, and a rule introduced that wherever a case is stated the further execution of the order, out of which the case stated has arisen, shall be stayed.

Witnesses Travelling by Air

The latest regulations governing the allowances payable to witnesses (the Witnesses Allowances Regulations, 1948) do not make any direct reference to expenses incurred in travelling by air, and therefore when a summary court was recently asked to make an order under s. 1 of the Costs in Criminal Cases Act, 1908, for the payment of the fares by air for three witnesses from Northern Ireland, some doubt was at first expressed as to the power to make such an order. However, since reg. 7 (1) allows the payment to a witness of a fare actually paid which is incurred in "travelling by railway or other public conveyance" quite clearly, such payments are within the scope of the regulations. In this case, the total claim on public funds by the three witnesses was only slightly greater than that which would have been claimed if they had travelled by rail and steamer, for although the fare by air was considerably more this was compensated by a reduced claim for loss of income, subsistence and night allowance.

The regulations are clearly designed to ensure that no real loss or hardship shall fall upon a witness and where, as in the present case, the inconvenience and loss of time to a witness can be reduced considerably by travelling by air, the slight increase of expenditure so incurred is fully justified both by the letter and the spirit of the regulations.

Cost Of Dustbins

It was reported in the newspapers a few days ago that the Windsor magistrates had allowed under s. 75 of the Public Health Act, 1936, an appeal by property owners against an order of the town council requiring them to provide a dustbin for a tenant. The council's contention was that a weekly tenant, who might have the benefit of the dustbin only for a short time, could hardly be expected to pay for it, while the landlord argued that it was a chattel which could be moved by the tenant and ought therefore to be paid for by the tenant. Where the tenant does

provide the bin, either voluntarily or by compulsion under s. 75 of the Public Health Act, 1936, or in virtue of a stipulation in his lease, it obviously remains his property, and he is at liberty, if he moves to another house where it is not needed, to sell it to the incoming tenant or otherwise. If he moves to a house which has no bin, he is free to take it with him. From this point of view there is a good deal to be said for putting the burden on the tenant, the more so that, if the burden is put upon the landlord, this will not prevent the tenant's making away with the bin if he is dishonest, or prevent its being stolen by other persons, against whom the tenant is in a position to take some precautions, whereas the landlord is not. Notwithstanding this, we believe it has been a growing practice for local authorities acting under s. 75 of the Public Health Act, 1936, to require landlords to provide the bin. The Windsor decision followed one given by the recorder of Birmingham some months earlier which, in a newspaper cutting sent to us, was stated to have been a "test case." It is plain to our minds that s. 75 of the Act of 1936 contemplates that the local authority shall, in every case where a bin is found to be needed, give consideration to the question whether to put the burden on the landlord or the tenant. This was, as we see it, the whole point of reshaping the law as is done in that section; the older law, fully indicated in *Lumley's* notes to the section, did not allow the same flexibility. Whichever way the local authority decide this question, the person affected has a right of appeal to justices and it is evident that where, as apparently in the Birmingham case, the local authority has been following a policy of putting the burden on the one party or the other, one possible ground for an appeal will be that they have not considered the facts of each case. The earlier cases of *Croydon Corporation* v. *Thomas* [1947] 1 All E.R. 239; 111 J.P. 157, and *First National Housing Trust Ltd.* v. *Chesterfield R.D.C.* [1948] 2 All E.R. 658; 112 J.P. 413, also went in favour of landlords, and show the relation between the Act of 1936 and the provision about transferring a "burden or liability" in s. 2 (3) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. We do not know whether the fact that the point cropped up in four such different areas as Birmingham, Chesterfield Rural, Croydon and Windsor, indicates any general trend among local authorities. A statement was attributed to the city council of Birmingham, that considering each case separately as required by the Act would be so expensive that it would be cheaper to provide new dustbins at the cost of the rates. This may be so in a very big town, but it seems to be the legal position, that each case ought to be considered.

War Damaged Sites

The War Damaged Sites Act, 1949, passed into law amongst the last batch of statutes in the last Parliament, and is a useful, unpretentious, measure which should be valuable, especially in towns where there has been a good deal of damage and there is a dearth of playing fields facilities. Some years ago we ourselves suggested in these notes that local authorities could at the same time improve the appearance of their towns, and help to keep children out of the streets, by combining the work of clearing up damaged sites and providing open space (of a sort) for children's games. The Act of 1949, in substance, gives effect to our suggestion, and makes it easier to carry out. Short term loans, ordinarily five years, will be sanctioned by the Minister of Health in appropriate cases for purposes of the Act, and a circular 8/50 from the Ministry explains the relation between work incurred for this purpose and the provisions of the Town and Country Planning Act, 1947, and the subject of development charges.

Strain in a Chain of Command

Questions of considerable interest and importance are arising in connexion with the replacement of members of various bodies constituted under legislation putting the administration of a number of public services on to a national basis. An illustration may be taken from the national health service, in which regional hospital boards and hospital management committees are prominent instruments in the discharge of ministerial responsibility.

A regional hospital board consists of a chairman appointed by the Minister (of Health) and such other members so appointed as the Minister thinks fit. Also under the National Health Service Act, 1946, s. 11 and sch. 3, part I, the members must include persons appointed after consultation with various authorities and organizations. A hospital management committee consists of a chairman appointed by the regional hospital board for the area and such other members so appointed as the board thinks fit. Also under sch. 3, part II, consultation with various authorities and organizations is required. In each case, *i.e.*, of board and committee, discretion to accept or reject appointees who may be proposed in the process of "consultation" is, in the last analysis, absolute.

Whether or not such virtually unfettered discretion is regarded as desirable depends upon views from numerous angles. Present background must have a substantial influence, which will diminish as time lengthens from days when the health services then existing were administered by directly elected and autonomous local bodies. Initially, the new structure of boards and committees gave an impression that functions were being transferred from local authorities to others who would continue to discharge those functions, with others, in a more scopeful yet better integrated system. Eventually, if boards and committees find themselves encased in a strait-jacket of ministerial direction, which may be well-founded in principle though disagreeable in local application, the structure will become rickety and meaningless so far as concerns its presumed purpose of continuing the administration of a public service by local representatives of the public.

There seems to be little doubt that members of a subordinate body who oppose the policy of an appointing body will run a grave risk of not being returned to membership when their term expires. This will appear to local organizations from whom recalcitrants draw their support and inspiration as though opposition is being borne down more by sheer weight than sweet reason. The appearance may not be deceptive, but the objectionable action may be far from wholly bad. Administrative areas and technical performance in a substantial sector of the public services had been so outgrown by possibilities of improvements that changes were overdue. Adherents of the old order, whose achievements could hardly have been improved upon in contemporary circumstances and who have made the new order possible, may necessarily be shaken off.

At the heart of the matter, one question is whether the numerous advantages of large-scale operation under national direction can, somehow or other, be combined, in an effective and economical manner, with vesting of responsibility in local bodies having an elected membership. Dispensation with local bodies either by outright abolition, constitution for automatic affirmation or other circumventions, would be easy, and in some ways a justifiable solution. There is no doubt, however, that voluminous benefits are derived from voluntary and disinterested services rendered by many lay and professional representatives on local bodies, and that great care is desirable, from above not to employ fear of power to stifle honest opinion and from below not to be critical for excessively parochial reasons.

JUSTICES OLD AND NEW

By A CLERK TO THE JUSTICES

As a clerk to the justices, the writer has been interested, not unnaturally, in the debates in Parliament concerning the fitness or unfitness of magistrates, the letters to the press on the same subjects, the conclusions drawn, and the policy now being pursued.

Needless to say, there is general agreement that a bench of magistrates should, first, represent a "cross-section" of the society and politics in its division, and secondly, that there should be "equality of opportunity" for all persons to serve on it, who are in their early middle age, and of course "without distinction of class or creed." Given such benches, magisterial law is certain to be conducted in an efficient and intelligent manner.

"Cross-section" and all these phrases are part of our "spiritual heritage" as familiar to this generation as "Won't wash clothes," "Worth a guinea a box" and "Try it in your bath" were to a former. Let us hope they are equally efficacious. They are an "open sesame" for admittance to those assemblies for which the votes of "the workers" are required. The writer's views on their merits are not the subject of this article: in this article the writer is considering their effect on the administration of justice in those magistrates' courts with which he is familiar.

The writer has observed that most experts and critics who speak and write on magisterial reform do not speak of the work to be done, but only of the class of person they themselves would like to see doing it. It is proposed in this article by way of novelty to try a different plan: first to consider the work of a magistrate, and then, not to amuse or infuriate readers with the writer's preference and prejudices, but merely to set forth how he himself (not someone else) finds this work is being done.

A magistrate's duties and qualifications include the following:

1. Attendance at quarter sessions and its committees.

2. Fitness to act as chairman of his own bench as needed.

3. Intelligence to understand the cases which he hears (and to know when and when not to snub the clerk).

4. Fitness to sit on a juvenile court, and (according to the most learned authorities)

5. Willingness to act as a welfare officer (*e.g.*, to advise in the quarrels of married people, investigate home conditions, read blue books, read, mark, learn and digest those pamphlets which explain that brutality deserves kindness and sympathy, and to spend whole days in visits to approved schools.

It does not require great intelligence to see, even from this very incomplete list, that a magistrate must be able to give a considerable part of his time (possibly all his leisure time) to his work. One would have thought magistrates would be chosen from the ranks of those with most time to give, but they are chosen from those who have little. One would have thought that a certain standard of education re-inforced by a period in which to gain experience might have been required. Nothing of the sort: anyone is fit to decide all cases from the date of his appointment. Divine right has deserted the throne for the bench of an inferior court.

The writer has not been clerk to the justices for a great number of years, but in his time he has seen greater changes on his bench than any of his predecessors can have done. When he was appointed, the bench was composed of nearly all wealthy and leisured people: now it is composed of farmers, tradesmen and "representatives of labour." Incidentally, it pleases the writer to observe that each member of his bench adds to its wisdom in his or her own way, and still more that they trust him to give and not obtrude advice.

Besides his own bench, the writer is familiar with three or four others, which like his own, have changed in recent years, and he now proposes to consider how all these benches compare today with the time when he first knew them, and how far the members can carry out the duties which he has roughly enumerated.

1. *Quarter Sessions.* In the bad old days (pre-1939) county quarter sessions were still something of a social affair and most magistrates attended them fairly regularly. No doubt time was wasted but also experience was gained in a not unimportant part of a magistrate's work. Today, the social part has nearly, if not entirely, vanished. The writer finds most magistrates say either thay have not time to go; or if they go, they do little good with fifty or sixty others present.

2. *Chairman of Petty Sessions.* When first the writer knew the benches, each had an excellent chairman and also several members who could deputise very competently: in particular, one of the chairmen knew not only how to preside but could often elicit the truth from a witness more competently than many solicitors. Today there is rarely a single chairman among these benches who can express himself fluently and clearly in the King's English. Rambling and mumbling from the bench unhappily causes amusement among those who appear before it.

I am aware some will say this is no new thing, and will quote the Mayor of some small borough as an example of early buffoonery. The Mayor was and is a class part. Probably he is a small business man pleased to call himself the "Chief Magistrate" but he is, first at least, ignorant of all magistrate's duties, though he takes them, as he says, "in his stride." However, shortly this kindly, harmless, sometimes pompous functionary is removed from the scene.

3. *Petty Sessional Work.* In the writer's opinion the standard of common sense is today quite as high as it ever has been. Some benches were always susceptible to claptrap, and probably it is still quite as easy for a clever advocate to hoodwink or sidetrack them by emotional or quasi-religious humbug as it always was. But from experience the writer has found an even still greater anxiety to do right (to convict as well as acquit) in the present benches as in any previous ones and perhaps a wider experience in all classes of life. What he finds lacking, and distinctly lacking, is that none of the present day magistrates have the time and some have not the education for the study of court procedure and even the most elementary parts of it. This has both advantages and disadvantages. It has put the chairman sometimes into a foolish position; but then some of the old chairmen put themselves into a foolish position, for some of them relied too much on their amateur knowledge of sometimes antiquated law, and regarded their clerk as a rather quaint pedant, liable to become tiresome if encouraged and better confined to writing down the court sentences.

The result of this change is not only that there is a greater respect for the clerk and willingness to hear him, but however diffident and unwilling he may be, to increase his influence. The bench is apt to regard itself as a jury concerned only with the facts at issue. If the powers that be denounce clerks "who

run the court," they had better appoint stronger magistrates, for this abuse is due to weakness on the bench. Where a clerk "runs the court," it is generally only because the chairman cannot.

The writer is going to say little about women magistrates because his knowledge of them is not wide. Those he has known have never seemed to get a really sound knowledge of the court procedure, and sometimes fail to understand the nature of the charge; on the other hand their observation of the character of witnesses is acute.

With regard to age, the writer, being a hopeless back-number, prefers the magistrate of fifty to seventy-five. So far he has not perceived that "push and go" or "fresh outlooks" have added very much to the wisdom of the bench.

4. *Juvenile Courts.* According to the official view, many extraordinary qualities are required for this panel. "Great sympathy for children" of course being essential. The experts who bombard magistrates and clerks with pamphlets go further: they appear to wish sympathy to be extended to the crime and denied to the person who has suffered from it.

From the pamphlets the writer gathers that a deep knowledge of "complexes" "inhibitions" and other jargon are an essential part of the qualification of the juvenile court bench. In practice only much more homely material is available in most divisions.

The position, however, is not so fearsome as it sounds, for the hands of juvenile court magistrates are so tied that unless the little offender is fit for an approved school or a mental home, there is very little to be done with him. The writer thinks his bench do that little well and the older magistrates do it the best. The best juvenile court chairman he has ever seen is an old gentleman close on retiring age.

5. *Social Work.* The writer thinks women magistrates are invaluable in matrimonial cases, indeed, probably indispensable. Unhappily, he has yet to find the "active magistrate" (*i.e.*, the business man of thirty to fifty) who reads blue books and criminal statistics for preference (if at all), or that the offer of a free bus ride to an approved school can compete with golf or shooting. That is not to say that none avail themselves of these invitations, but the writer is doubtful if these conducted tours give any real insight of the work of these institutions.

The position today appears to be this: more and more work is expected of a magistrate but his qualifications to perform it are being reduced. Instead of concentrating on the improvement of benches, the powers that be (and the writer does not blame any one political party) merely regard the magistracy as a reward for some public activity which has nothing to do with the administration of justice. It is true that the old educated leisured class has been destroyed, but there are still educated people in the country who are hardly, if at all, represented on the benches. What with the increase of work and the creation of magistrates on the present lines, however well intentioned the benches may be, the writer does not think they can survive the criticism which one day will be directed against their weaknesses. He suspects that the powers that be (again not any one political party) know this and intend this, and that in due course the benches will be "thanked for their valuable services," but told they must give way to stipendiaries.

[The publication of the above article must not be taken as necessarily implying agreement on the part of the *Justice of the Peace and Local Government Review* with the views of our contributor.—*Ed., J.P. & L.G.R.*]

CHIEF CONSTABLES' ANNUAL REPORTS, 1949

(*Continued from p. 178 ante*)

5. ST. HELEN'S

The population is 107,452 and the area 7,950 acres. The establishment is 160 and the actual number engaged 108; including four police women. Promotions made were one to inspector and three to sergeant's rank. Sickness was responsible for a loss of 2,009 days; compared with the previous year there was an increase of 530 days. Special constabulary strength is 104; the appeal for volunteers for Civil Defence and allied services produced only five candidates for the special constabulary.

Indictable offences totalled 1,206, being an increase of 112 on 1948, seventy-five *per cent.* were detected. Stolen property was valued at £7,199 and the goods recovered £2,608. One hundred and sixty-seven juveniles were dealt with by the court, thirty-seven more than during the previous year.

Street accidents totalled 764, six people were killed and 266 injured; of those killed three were children under fifteen years old.

Licensed premises number 161 and nineteen persons were charged with drunkenness, the same as in 1948. One thousand eight hundred and forty-three articles were found and deposited with the police, 784 of these were restored to owners and 265 returned to the finders. Unclaimed property was sold and the proceeds credited to the police fund.

6. LIVERPOOL

The population of the city is 765,000 and the area 27,321 acres. The establishment is 2,257 and the actual strength 1,911; included in the number are two inspectors, thirty-one sergeants and 272 constables wholly employed by the Mersey Docks and Harbour Board. During 1949 ninety-nine members of the force retired on ordinary pension and eleven on account of ill health; in addition further wastage accounted for seventy-three men and women. Of this total forty-nine men resigned, six transferred to other forces, five died, the services of five probationers were dispensed with, two women resigned and the remainder left for various reasons. Appointments during the year aggregated 201 made up of 187 men and two women recruits, four transferred from other forces, three returned from seconded duty and five re-appointments.

Twenty women police are engaged with the force including one inspector and two sergeants. One sergeant and two women constables have been allotted duty in the criminal investigation department. Women are in daily attendance at adult and juvenile courts as well as at the sittings of the courts of assize and quarter sessions.

"Perhaps the most important innovation during the year" continues the report, "was the formation of the Police Cadet Corps. Forty boys between the ages of fifteen and seventeen were appointed after careful selection from a large number of applicants. Except for week-ends and one night during the week the boys reside at the Police Training School where they received an initial training course of five weeks' duration. Eventually they commenced duty in the divisions and the various departments of the force according to a prepared scheme, returning for further training for two days of each week. In addition to their employment in a police capacity, they are given instruction in educational subjects, shorthand and typing, first-aid, physical training, self defence, games and swimming. It is too early to draw conclusions about the final results of the scheme but up to now it has proved to be very satisfactory indeed . . .

ultimately the Corps will be of immense benefit to the force in providing a flow of recruits who will have a sound apprenticeship to the police service." Civilian staff engaged total 109 men and 177 women employed as clerical assistants, wardresses, telephone operators, typists, cadets, cleaners, tailors and fitters.

Dealing with recruiting the report indicates a decline in the number accepted, 187 compared with 210 the year before. "In spite of the publication of the Oaksey Report and extensive advertising, 1949 was a disappointing year, the worst, in fact, since the end of the war. One encouraging feature, however, was the substantial reduction in the number of young men who resigned." Of 363 applicants interviewed 187 were accepted, the remainder were rejected either on medical or educational grounds; thirty probationers resigned or were dismissed. In 1946, 617 applicants were interviewed and 302 accepted. Thirty-two females were interviewed and two accepted; two police women resigned. In 1948, forty-eight women made application to join, fourteen were successful and three resigned.

In regard to housing, negotiations are complete in most of the building schemes approved by the watch committee and it is anticipated that more than sixty houses will be ready for occupation during 1950. There are still twenty men who are separated from their wives and children because they cannot get accommodation in Liverpool. Ninety-one men have been given permission to live outside the city for the same reason and a good number of men have unsatisfactory accommodation in the city.

The total number of accidents resulting in death or personal injury was 2,917, an increase of 425 compared with 1948; seventy-nine persons were killed as against seventy-three the previous year. In twenty-eight cases the fatalities were children under fifteen years old. Non-fatal accidents caused injuries to 3,396 persons.

Altogether 18,958 crimes were reported during the year, the lowest figure since 1945, and a reduction of 4,151 on the 1948 total; 816 fewer persons were proceeded against for criminal offences, but cases of robbery increased from fifty-nine to seventy-six. The percentage of these crimes detected was thirty-four. Thefts from the docks totalled in value £14,656, a reduction of £6,914 on the previous year.

Juveniles prosecuted from indictable offences numbered 1,931, a reduction of 274 compared with 1948.

In an extract from the report to the Licensing Justices it appears that only two prosecutions of licensees took place during the year. There were 1,635 charges of drunkenness, an increase of 410 on the previous year but a decrease of 1,800 on the 1938 figure. Drunkenness of females increased by sixty-two. Twenty-eight males were prosecuted for driving motor vehicles whilst under the influence of drink, the year previous twenty-three men were charged. There are 175 registered clubs, an increase of nine. Proceedings were taken against twelve clubs during the year and six were struck off the register. Proceedings were also taken in respect of three shebeens (unlicensed houses selling drink) as compared with seven the year before.

JUDEX ARTIFEX

It has been suggested to us by the town clerk of a county borough where, if our impression is correct, there may be room for a good deal of demolition and rebuilding, that it would be helpful for us to deal further with certain considerations affecting the administrative and quasi-judicial functions of Ministers, particularly the Minister of Town and Country Planning. Our correspondent tells us that some questions about this were raised at the annual conference last year of the National Housing and Town Planning Council, and that a delegate referred to a practice, understood to be followed sometimes by the Ministry of Town and Country Planning, of sending a representative to an area to make informal inquiries on the spot, before the holding of a public inquiry under s. 16 of the Town and Country Planning Act, 1947. The object of sending a representative in an appeal case, in advance of the statutory inquiry, is to see whether the appellant and the local authority can be brought to terms before the issues are publicly thrashed out, so as to avoid the expense and possible delay of an inquiry. If two very different things may be compared, there is a sort of analogy with a matrimonial dispute, where the probation officer may try to bring parties together or this may be done by one of the marriage guidance councils. The analogy of the probation officer is perhaps the better, since he is an officer of the court before which the case will eventually come if a settlement is not reached, just as, if the appeal is persisted with, a town and country planning appeal will eventually come before the Minister whose officer has tried to bring the parties together. Our correspondent tells us that, at the above mentioned conference, Mr. Desmond Heap (who had been reading a paper on the provisions of the new planning legislation) expressed the opinion that the practice just mentioned was not open to objection because, in hearing planning appeals, the Minister was not acting judicially or even quasi-judicially but in a purely administrative capacity. This proposition is said to have been established by the decision in *Franklin v. the Minister of Town and Country Planning* [1947] 2 All E.R. 289; 111 J.P. 497, in the House of Lords. Our learned correspondent, after re-reading the report, finds himself unable to accept the opinion attributed to Mr. Heap, and asks us to deal further with the matter. We say "further" because we have already dealt with it to some extent at 111 J.P.N. 39 under the heading "Public Inquiries: New Style" and 111 J.P.N. 186 under the title "Stevenage upon Appeal" (and in the same year under "Colophon to Stevenage") where we referred to the case which reached the House of Lords under the title of *Franklin v. Minister of Town and Country Planning*. At 111 J.P.N. 735 we published a signed article on some aspects of the problem raised. Nobody concerned with town and country planning will lightly question an opinion on that subject by Mr. Desmond Heap, and it may be that in this particular matter, where we have before us only a second-hand account, Mr. Heap did not say what is attributed to him in quite that form. If he did, we respectfully doubt whether enough emphasis was placed upon the possible difference between one type of inquiry and another. The *Stevenage* case arose under the New Towns Act, 1946, and the inquiry is, necessarily, of the type which we discussed in our article first above mentioned. The prototype of the decisions upon this class of inquiry is *Re London-Portsmouth Trunk Road* [1939] 2 All E.R. 464, relating to compulsory purchase under the Trunk Roads Act, 1936. The procedure then considered was applied by rule 5 in sch. 1 to the Town and Country Planning Act, 1944; by s. 3 (10) of the Local Government (Boundary Commission) Act, 1946; and finally by the Town and Country Planning Act, 1947. The schedule to the Act of 1944 is highly remarkable; the Minister is excused from holding an inquiry under rule 5 if, in terms of rule 4, he is satisfied that he is sufficiently informed

as to the matters to which objection relates. The art of making a man judge in his own cause could hardly go further: it is, indeed, the essence of these inquiries that the Minister is to be judge in his own cause. This is not his fault: in saying it we are not even begging the question whether his function is judicial; he has been required by the Act to formulate a proposal and lay it before those affected or before the public, and the method of a public local inquiry is adopted in order to ensure that those affected can express their opinions or that public criticism of the Minister's proposal is focussed and made available to him. Lord Thankerton made this very clear in *Franklin's* case. Looking back upon the arguments in such cases as have been before the courts arising out of this procedure, and particularly upon Mr. Caperwell's forceful arguments in *Rollo* v. *Minister of Town and Country Planning* [1948] 1 All E.R. 12; 112 J.P. 104, and *Franklin* v. *Minister of Town and Country Planning*, *supra*, one can say that the procedure is not, and is not meant to be, judicial or quasi-judicial in the most ordinary meaning of those words—it is designed as a conduit pipe. The Minister's statutory duty is to erect the conduit, and duly to place himself at the receiving end of it. He would be failing in that duty if he took no notice at all of the report of the person holding the inquiry, but he is under no duty to be convinced either by the weight of evidence at the inquiry or by the opinion expressed by the inspector who is the conduit pipe. His position, in other words, is in this class of case exactly the opposite of that of a jury or a judge trying an issue of fact. Such a judge must give a decision according to the evidence which has been brought out at the hearing, and according to that alone. The judge may from other circumstances, his training in some particular direction, or information which happens to have reached him, be personally convinced that that evidence does not lead to the best conclusion but, unless the evidence is such that he feels entitled to reject it because the witness is untruthful, or because in some way the evidence as evidence is unreliable, he cannot go behind it. The Minister on the other hand may, under the New Towns Act, 1946, for example, be confronted with overwhelming evidence which convinces him that ghastly losses will be suffered by the persons objecting to his order, if he makes the order; yet he is entitled upon grounds of general policy to refuse to be deflected from his course. To say all this is not to say that the Minister is to disregard natural justice, or decide arbitrarily, or in any way to depreciate the value of these new style inquiries. On the contrary, we think the pre-war invention, which the Coalition Government adopted for focussing a local spotlight upon areas under examination by virtue of the Town and Country Planning Act, 1944, or by virtue of the Local Government (Boundary Commission) Act, 1945, thus setting a fashion in post-war legislation, was a good invention. It does not, however, follow that the position of the Minister of Town and Country Planning must be regarded in the same way when he is holding an inquiry of a different sort. Wherever there is something in the nature of a *lis inter partes*, and the Minister is by Parliament placed outside that *lis*, then he must hear and weigh the evidence given at the inquiry, and decide in a judicial manner according to that evidence so far as it covers the issue. But these last seven words are vital. What we mean is that there is yet a further refinement. The side which brings the better evidence may still not get the verdict because, in many cases of ministerial decision as distinct from decisions by the courts, Parliament has given the function of deciding a *lis* to a Minister who also has to regard the object of the statutes under which the inquiries are held. The purpose of a local inquiry is to ascertain facts, about something tangible enough to be the subject of evidence relating to that particular locality. That evidence, when carefully weighed, may not be the sole matter which the Minister has to determine. He cannot close his mind to the national policy at which the statute is aimed, any more than in the recent case of *Pickett* v. *Feay* [1949] 2 All E.R. 705; 113 J.P. 528, the Divisional Court closed its mind to the policy of the Exchange Control Act, 1947. In that case, it will be remembered, a bench of magistrates adopted a lenient course, such as is done every day with defendants under other statutes, but the Divisional Court upon the view it took of national interests sent the case back to the magistrates with a direction to impose a penalty, which must be substantial. So in the realm of local inquiries. The Minister knows that Parliament wants blitzed sites to be cleared, or schools or houses to be built, or a modern standard of fitness for habitation to be obtained. He cannot shut out this knowledge, when he comes to consider the evidence at the inquiry in relation to the action he will take. The orthodox doctrines about judicial and quasi-judicial functions began life in cases where the Minister holding the inquiry might be supposed to be impartial between different views; it was nothing to him whether the private person was allowed to do that which the local authority sought to forbid, or whether the local authority obtained power to purchase the private person's land compulsorily, or whatever the subject matter might be. Now, if the Minister is entitled to have regard to national policies, nay, more, if as in many of these cases he is under a statutory duty to promote national policies, it cannot be wrong for him to form his mind about the method in which those policies will impinge upon local circumstances and private rights and claims. Before the stage is reached at which a local inquiry would be appropriate, there will often have been discussions between representatives of the local authorities concerned and the Minister's advisers and, if this is admissible (as it must be), it is clearly admissible for the Minister to send an emissary to gather information on the spot. Great care is proper to be exercised within the government department concerned, to prevent information gathered by such an emissary, or brought up to Whitehall by deputation or sent by the local authority in written communications, from adversely affecting the weighing of the points which have to be thrashed out at the public local inquiry. The classic statement is still that of Lord Loreburn in the case of *Board of Education* v. *Rice* (1911) 75 J.P. 393: "In the present instance as in many others what comes for determination is sometimes a matter to be settled by discussion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matters of law as well as matters of fact, or even depend on matters of law alone. In such cases the Board of Education will have to ascertain the law, and also to ascertain the facts: I need not add that in doing so they must act in good faith and listen fairly to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such question as if it were a trial. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy, for correcting or contradicting any relevant statement prejudicial to their view." Twenty-five years later this last point was taken up in *Errington* v. *Minister of Health* (1935) 99 J.P. 15, a case which related to a local authority's closing order. Greer, L.J., then said: "It seems to me that if, as I think, the Ministry were acting in a quasi-judicial capacity they were doing what a semi-judicial body cannot do, namely hearing evidence from one side in the absence of the other side, and viewing the property and forming their own views about the property without giving the owners of the property the opportunity of arguing that the views that the Ministry were inclined to take were such as could be readily dealt with by means of repairs and alterations to the buildings." (A very queer piece of English, but the meaning is quite plain.) The decision in *Errington* v. *Minister of Health* was that Lord Loreburn's test had not been satisfied: that is to say, that the order confirming

the town council's closing order could not be supported. This decision appears to be doubted by Mr. Desmond Heap, in his notes upon the Acquisition of Land (Authorization Procedure) Act, 1946, in the *Encyclopaedia of the Law of Planning Compulsory Purchase, and Compensation*; he goes on to suggest that, even if rightly decided under the Housing Acts, it is no authority for the purposes of the Acquisition of Land (Compensation Procedure) Act, 1946, or *semble* the Town and Country Planning Act, 1947. Our own view is that the first part of the remarks of Greer, L.J., above quoted, is unimpeachable, standing by itself as a statement of principle. It does no more than repeat Lord Loreburn, in saying that evidence must not be heard from one side in the absence of the other side, but we think his lordship and the court went wrong in the second part of those remarks, where he speaks of the Ministry as viewing the property and forming their own views about the property, without giving the owner of the property the opportunity of arguing that the views which the Ministry were inclined to take were such as could be readily dealt with by some other means. The underlying fallacy, as it seems to us, in this passage is the same as was exposed, not so long after the decision in *Board of Education* v. *Rice*, in that other well-known decision of the House of Lords, *Local Government Board* v. *Arlidge* (1915) 79 J.P. 97. The fallacy really lurks in Lord Justice Greer's use of the noun "Ministry": it consists in the implied suggestion which had been explicit in the argument for Mr. Arlidge, and had been rejected by the House of Lords, that an inspector, sent from a government department to view property, is a witness whose report is evidence. The point is almost metaphysical, but the true conception is that the Minister decides, even though the process of deciding must often be entrusted to a delegate, and that the Minister also views the property, even though he does so through another's eyes: the eye conveys its impression to the brain in a different body, the result being recorded by yet another's pen. Get rid of the notion of the inspector as a witness, and school your mind, if you can, to the metaphysical conception of a Minister who goes and looks at something (as a judge may do but not in the same physical mode), and there is no such difficulty as Lord Justice Greer seems to have felt about the Minister's forming his provisional opinion on the spot. What would be objectionable, where there was a true *lis inter partes*, would be that on such a visit an opportunity should be given to one side, typically the local authority, to present evidence in the absence of the other. The regular inspectors of the older government departments are in our experience normally insistent that whenever an officer of the local authority acts as their guide on a visit of inspection the property owner, or "the other side," shall be represented, or be given specific opportunity of being represented. It is not without significance that from 1909 to 1930 (a span of years in which, despite the first world war, there was great activity in the making of closing orders for houses unfit for human habitation) the appeal of the owner of the house lay to the Local Government Board and then to the Minister of Health, who invariably sent a housing inspector to hear the case and examine the premises—indeed, was by s. 39 of the Housing, Town Planning, &c., Act, 1909, obliged to hold an inquiry—and that, throughout that period, the *Arlidge* case was the only one in which complaints of the procedure came prominently to notice.

Admittedly observance of the central principle laid down by Lord Loreburn becomes more and more difficult, as Ministers are put by Parliament more and more into the position of executive authorities for giving effect to national policies. In the earliest Housing Acts (and how wrong it is, as some politician lately stated in course of the election contest, that before 1919 there was no housing work worth mentioning by local authorities) Parliament conceived of the local authority as entitled to move fast or slowly as it thought fit, under the guidance of local opinion, just as, rather earlier, it had been left to local people to form bodies of commissioners and put in force adoptive Acts. It was generally felt that, if public opinion in a locality wanted sewers, or housing for the working classes, or fever hospitals, or as the case might be, the statutory machinery should be there for providing these advantages, but that, if public opinion in the locality was content to be without them, it was just as much entitled to do without them as it was to do without a park or a free library. Whether under adoptive Acts so-called, or under the Public Health Acts and Housing Acts, the emphasis was on local option and so, when local authorities were given specific power for the closing of houses unfit for human habitation, the underlying notion was at first that they would use that power or not as they thought fit. This being so, it was easy, even though the Act of 1909 declared that the "principal Act," that of 1890, should no longer be adoptive, and gave definite powers to the Local Government Board, still to conceive of the inquiry into a closing order as quasi-litigation.

The position gradually altered, and the *lis inter partes* wore much thinner decade by decade, as Parliament took it into its head to use Ministers as instruments of policies in furthering which, almost *ex hypothesi*, national opinion as reflected at Westminster was, or believed itself to be, ahead of local opinion represented on the local authority. It was Greer, L.J., himself who, the year after *Errington's* case, remarked in *Offer* v. *Minister of Health* (1936) 99 J.P. 347: "I cannot conceive what objection can be taken to that statement having been made by this inspector from the Ministry of Health to the corporation." The "statement" was advice to a local authority, about a matter which later came before the Minister for decision as between the local authority and the property owner. Greer, L.J., continued: "I cannot conceive the slightest ground for saying that what has been done has in any way prejudiced the decision which was finally made by the Minister of Health on the report of the inspector and after full consideration of the objections that had been made." It will be seen that in these two passages Greer, L.J., seems to distinguish that which goes into the inspector (which is liable to pollute his Minister) with that which comes out of the inspector which may move the local authority to a course of action on the propriety of which the Minister will afterwards have to adjudicate, but is not regarded as polluting the quality of ministerial justice. With respect, we find this distinction between "into" and "out of" not easy to support. The truth is that, by 1935 and 1936, the tide had already turned. What may broadly be called the Whig conception, that government should keep outside the activities of ordinary life, the conception exemplified by Cato Uticensis, Coke and Dr. C. K. Allen, had passed away in favour of the conception favoured by the Gracchi, Strafford, and the twentieth century, of active use of the power of the State. This is perhaps most evident in s. 2 (2) of the Acquisition of Land (Authorization Procedure) Act, 1946, empowering a Minister to confer upon himself a power which otherwise might be exercisable by some local or other public authority subject to his confirmation. Here the logic of what has happened is plainer even than in the Housing Act, 1936, or the Town and Country Planning Act, 1947, or the other modern Acts, which empower a Minister to act in place of a local authority, but sch. 3 to the Act of 1946 shows Parliament still anxious that when the Minister comes down from the bench, and plays a part which otherwise would have to be taken by a litigant in his forum, this shall not damnify the other players, nor does the duality of his nature mean that, when he is upon the bench, he is excused from acting judicially towards litigants.

In *Johnson* v. *Minister of Health* [1947] 2 All E.R. 395 Lord Greene, M.R., pointed out that the decision in *Board of Education* v. *Rice*, *supra*, had been given in a case where the Board was in the nature of an arbitral tribunal. If this be borne in mind, the doubt about the validity of the decision in *Errington* v. *Minister of Health*, *supra*, is diminished, and it becomes reasonably easy to reconcile it with the decision in *Offer* v. *Minister of Health*, *supra*—more easy, at any rate, than upon the above-quoted parallel passages in the judgments of Greer, L.J., in those two cases. This approach involves questioning a remark of Lord Haldane in *Local Government Board* v. *Arlidge*, *supra*, where he expressed doubt "whether it is correct to speak of the case as a *lis inter partes*, when the Hampstead borough council was itself acting administratively." With all the respect due to Lord Haldane, a profound thinker as well as a learned lawyer, we can see no ground for supposing that an administrative body, when its administration brings it into conflict with a private person, or indeed into conflict with another administrative body, and legal proceedings result, is anything but a litigant. So, under the Housing Act, 1930, upon which *Errington's* case was decided, and now under the Housing Act, 1936, the Minister of Health had to decide (in the facts which there arose) between a public body and a private person, and none the less so because, if the public body had not done what it did, he might have had to come down from the bench into the arena and do it himself—as was pointed out by Swift, J., in *Frost* v. *Minister of Health* (1935) 99 J.P. 87, and as appears on the face of the Housing, Town Planning, &c., Act, 1909.

To sum up then: we do not think the answer to the question with which this article opened is to be found by considering that the Minister of Town and Country Planning or any other Minister is proceeding under a particular Act. Under whatever Act, if he is deciding between A and B he must give them an equal opportunity of stating their respective cases, even though one of them be engaged upon an activity which Parliament has charged him to promote. He is, however, perfectly entitled, whether he is considering the case laid before him by two parties, or is considering an issue propounded by himself, as in *re London-Portsmouth Trunk Road*, *supra*, or in cases under the New Towns Act, 1946, to take into account not merely what is put before him in evidence but also the fact that Parliament has determined upon a certain line of policy. It may very well be that these growing pains, which have afflicted the courts and the mentality of lawyers almost throughout the present century, would have been much less if the public, the profession and Parliament had been far seeing enough to establish a central administrative court, so that Ministers should not have to bear the dual burden of being also judges, either in their own cause or in causes where they had a duty to support administrative bodies. But, it being still a fact that England lacks an administrative court, though it possesses by now a very large number of fragmentary imitations, we think the opinion of the profession is gradually feeling its way towards a practical solution of the problem on the lines we have just suggested. The older administrators in the established Whitehall offices have not, in our experience, found it difficult to disentangle the different aspects of the functions of their Ministers. In some notorious recent cases, such difficulties do seem to have been found, it may be because of inexperience among the staff of the greatly expanded departments of the present day, or it may be because of the increasing complexity of the subject matters. To sum up: we are inclined to think that the practice ascribed to the Minister of Town and Country Planning is normally unobjectionable, provided that within that Ministry sufficient care is taken, and provided (we would add) that the inspector holding a local inquiry is instructed to make it plain, to the persons appearing before him, that they have a right to put their cases, and that those cases will be considered whatever else has to be considered—which is not the same thing as to say that other things will not be considered at the proper time. This, by way of revising the adage that justice must not only be done but must be seen to be done. We prefer this way of putting the relation between a *lis* and s. 16 of the Act of 1947, to that of approaching s. 16 through *Franklin's* case, as our correspondent told us was done by Mr. Heap. Where the issue which has to be determined as the result of the public inquiry is a pure *lis inter partes* certain considerations apply, but a pure *lis* is *rara avis* in the jungle of the planned economy and the welfare state, and some things which it has been attempted to represent as *lites inter partes* are seen not to be so, when viewed against the background created by the statute under which the inquiry is held or other governmental function carried out.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Humphreys and Jones, JJ.)

R. v. O'NEILL AND ANOTHER

April 3, 1950

Criminal Law—Evidence—Cross-examination—Suggestion of charge against witness by way of defence—Defendant not called.

APPLICATIONS for leave to appeal against conviction.

The applicants O'Neill and Ackers, together with a youth named Hamilton, were convicted of conspiracy to rob with violence and assault with intent to rob. It was suggested in cross-examination to a police officer by counsel defending Ackers that the police had obtained a statement from Ackers by means of threats and physical violence. Ackers did not go into the witness-box.

Held, that the practice adopted was not a proper one, but that it was wrong for a defending counsel in cross-examination to make charges against a witness for the prosecution by way of defence, as distinct from cross-examining a witness as to credit, if he did not intend to call his client to give evidence to support the charge.

No counsel appeared.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

R. v. MIDDLESEX QUARTER SESSIONS

Ex parte DIRECTOR OF PUBLIC PROSECUTIONS

(Before Lord Goddard, C.J., Humphreys and Jones, JJ.)

April 4, 1950

Quarter Sessions—Committal for sentence—Offence not triable at quarter sessions—Jurisdiction to sentence offender—Criminal Justice Act, 1948 (11 and 12 Geo. 6, c. 58), s. 29 (1) (3).

MOTION for order of *mandamus*.

One X was charged with offering £80 to an officer of the Ministry of Food to induce him to advise against a prosecution, contrary to the Prevention of Corruption Acts, 1889 to 1916. The charge was heard before justices in petty sessions at Wealdstone on February 17, 1950, and at the close of the case for the prosecution the accused pleaded Guilty and asked to be dealt with summarily. The justices agreed, but when they heard that he had three previous convictions for offences against the Defence Regulations they committed him to quarter sessions for sentence. When the case reached quarter sessions the appeal committee decided that, as the offence of which the man had been convicted could not be tried at quarter sessions on indictment, they had no jurisdiction to deal with it, and the accused was, therefore, discharged. The Director of Public Prosecutions now applied for an order of *mandamus* ordering the appeal committee to pass sentence on the accused.

By s. 29 of the Criminal Justice Act, 1948: "(1) Where . . . a person who is not less than seventeen years of age is tried summarily by a court of summary jurisdiction for an indictable offence, and is convicted by that court of that offence, then if, on obtaining information as to his character and antecedents, the court is of opinion that they are such that greater punishment should be inflicted in respect of the offence than that court has power to inflict, the court may, in lieu of dealing with him in any manner in which the court has power to deal with him, commit him in custody to quarter sessions

for sentence . . . (1) Where an offender is so committed for sentence as aforesaid, the following provisions shall have effect, that is to say :—(a) the appeal committee or court of quarter sessions shall inquire into the circumstances of the case, and shall have power to deal with the offender in any manner in which he could be dealt with by a court of quarter sessions before which he had just been convicted of the offence on indictment . . ."

Held, that quarter sessions were right in deciding that they had no power to sentence the convicted person, as he could not have been tried and convicted before them. The application must, therefore, be refused.

Counsel : *The Attorney-General (Sir Hartley Shawcross, K.C.), Christmas Humphreys* and *F. H. Lawton* for the applicant ; *T. F. Southall* for the justices ; *James Burge* for the convicted person.

Solicitors : *Director of Public Prosecutions* ; *C. W. Radcliffe, Lucien Flor*.

R. v. BRIGHTON AREA RENT TRIBUNAL *Ex parte* MARINE PARADE ESTATES (1936), LTD.

March 29, 1950

Rent Control—Rent tribunal—Procedure—Landlord and Tenant (Rent Control) Act, 1949 (12 and 13 Geo. 6, c. 40), s. 1—Landlord and Tenant (Rent Control) Regulations, 1949 (S.I. 1949, No. 1096), regs. 3, 4, 5, 7, 8.

APPLICATION for orders of *certiorari* and *mandamus*.

The tenants of four flats at Marine Gate, Brighton, referred the rents of their flats to the Brighton and Area Rent Tribunal under s. 1 of the Landlord and Tenant (Rent Control) Act, 1949. On September 21, 1949, the tribunal determined the applications by reducing the rents from the figure of the standard rents of the flats. Each of the flats had been let for the first time after September 1, 1939, so that by virtue of the Rent and Mortgage Interest Restrictions Act, 1939, the rent at which it was then let became the standard rent. Before the tribunal the tenants called no evidence, but their counsel made a statement, the accuracy of which was not challenged. Several witnesses called for the landlords gave evidence at length, but were not cross-examined. The landlords, Marine Parade Estates (1936), Ltd., sought to have the tribunal's order quashed because, they said, it was contrary to the evidence, and because the tribunal had failed to act in accordance with the principles of natural justice. They also sought an order of *mandamus* directing the tribunal to hear the matter again.

Held, that it was the intention of the Act of 1949 and the regulations made under it that a tribunal should give its decision without hearing any party unless he desired to be heard, and that the procedure before the tribunals should be of the most informal nature possible. A tribunal must be able to act on its own impression and knowledge, though, if witnesses were tendered, it was always the duty of the tribunal to hear them. In the present case the tribunal could not be said not to have acted in accordance with the standards laid down by Parliament, or to have offended against any statutory provision or regulation. The applications, therefore, failed.

Counsel : *Gerald Gardiner, K.C.*, and *Alan Campbell* for the landlords ; *The Attorney-General (Sir Hartley Shawcross, K.C.)* and *J. P. Ashworth* for the tribunal.

Solicitors : *Stanley Johnson & Allen* ; *Treasury Solicitor*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

ACKROYDS AIR TRAVEL, LTD. v. DIRECTOR OF PUBLIC PROSECUTIONS

March 28, 1950

Civil Aviation—Carriage of passengers—Unauthorized person—Aiding and abetting—Travel agents—Proof of commission of offence—Knowledge of agents of system for scheduled journeys—Civil Aviation Act, 1946 (9 and 10 Geo. 6, c. 70), s. 23 (1).

CASE STATED by the Chief Magistrate for the Metropolis.

An information was preferred at Bow Street magistrate's court by the respondent, the Director of Public Prosecutions, charging the appellants, Ackroyds Air Travel, Ltd., travel agents, with unlawfully carrying passengers for hire or reward on a scheduled journey between two places, and one of which was in the United Kingdom, namely, Croydon Airport, the other was Le Bourget, Paris, contrary to s. 23 (1) of the Civil Aviation Act, 1946. The subsection provides : "Subject to the provisions of this section, it shall not be lawful for any person, other than the three corporations, their associates, and the servants and agents of the three corporations and their associates, to carry passengers or goods by air for hire or reward upon any scheduled journey between two places of which at least one is in the United Kingdom." By subs. (2) : "In this Act the expression 'scheduled journey' means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such a manner that the benefits thereof are available to members of the public from time to time seeking to take advantage of it."

A company registered in South Africa called Mercury Airways, Ltd., ("the company") which had an office in London, ran a service for air passengers from Cape Town. An Order in Council prohibited the company from landing their aircraft in England, and, accordingly, they terminated their flights at Le Bourget. By means of divers agents, of whom the appellants were one, the company booked reservations for passengers on aircraft operating as aforesaid between Paris and South Africa. The appellants remitted the bookings to the company at their office. On or about September 26, 1948, an agreement was made verbally between the managing director of the appellants and a representative of the company that the appellants should, if and when required by the company to do so, arrange for the conveyance from London to Paris of such of the company's passengers as desired to be in Paris in readiness for the flight on which they were booked to proceed thence to South Africa. From time to time thereafter between September 26 and November 20, 1948, the company requested the appellants to arrange for the charter of aircraft for the conveyance to Le Bourget airport of such passengers, to hire a coach to transport such passengers from London to Croydon, and to arrange for the necessary catering and baggage-handling facilities. Various flights were undertaken by the three charter companies referred to in s. 23 (1), and whenever anyone wished to go by the company's aircraft to South Africa, an aeroplane was at his disposal in this country to take him to Le Bourget, where he would board the company's aircraft. The magistrate found that scheduled journeys were undertaken by persons other than the three charter companies, that an offence had been committed by the three charter companies, and that the appellants had aided the three charter companies in the commission of the offence. Accordingly, he convicted and fined the appellants, who appealed.

Held, that there was clearly evidence to support the magistrate's finding that an offence against s. 23 had been committed, and that, whoever committed the offence, whether Mercury Airways, Ltd. or the three charter companies, the appellants had aided and abetted the commission of the offence, inasmuch as they knew all the necessary circumstances of the offence, namely, that there was a system under which scheduled journeys were undertaken. The appeal, therefore, must be dismissed.

Counsel : *Vaughan, K.C.*, and *Geoffrey Lane*, for the appellants ; *The Attorney-General (Sir Hartley Shawcross, K.C.)*, and *Gerald Howard*, for the respondents.

Solicitors : *Rowe & Co.* ; *Treasury Solicitor*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

WILTSHIRE COUNTY VALUATION COMMITTEE v. LONDON CO-OPERATIVE SOCIETY, LTD.

March 30, 1950

Rating—De-rating—Industrial hereditament—Adaptation for sale—Milk—Process before dispatch for pasteurization—Cooling process—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 149 (rep.)—Rating and Valuation (Apportionment) Act, 1928 (18 and 19 Geo. 5, c. 44), s. 3 (1).

CASE STATED by quarter sessions.

A proposal was made by the respondents, London Co-operative Society, Ltd., to the Trowbridge Assessment Committee for the amendment of the valuation list by the insertion of premises occupied by the respondents as an industrial hereditament, and as such de-rateable, on the ground that they were a factory within the meaning of s. 149 of the Factory and Workshop Act, 1901 (rep.). An objection was made by the Wiltshire County Valuation Committee. The assessment committee allowed the proposal, and the county valuation committee appealed to quarter sessions, but under s. 11 of the Quarter Sessions Act, 1849, this Case was stated by agreement of the parties. The following facts were agreed. The premises were used as a milk collecting depot from which milk was dispatched to London, about a hundred miles away, where it was pasteurized. Prior to dispatch the milk was prepared for bulk transport to ensure that it was received in London in good condition and at a proper standard in any weather. It would not be possible to ensure that that would be so if the milk were sent direct from the farms in churns on rail. Except for cleanliness and temperature, no change in the characteristics of the milk took place as a result of the processes applied at the premises. After testing, the churns of milk were carried by conveyor belt up to a tipping point where the milk was weighed and passed by means of power milk pumps through clarifying machinery to remove dirt and was cooled by chilled water to a temperature of about forty degrees. From the cooling point the milk was pumped into glass-lined insulating tanks and thence transferred to stainless steel road tankers owned by the respondents and dispatched to London.

Held, that the process described could not fairly be said to "an adapting for sale" of an article within the meaning of s. 149 of the Factory and Workshop Act, 1901 (rep.), and that, accordingly, the premises were not an industrial hereditament within s. 3 (1) of the Rating and Valuation Act, 1928, and were not de-rateable. The appeal must, therefore, be allowed.

Counsel: *Percy Lamb*, K.C., and *Widgery*, for the appellants; *Charles E. Scholefield*, for the respondents.

Solicitors: *Collyer-Bristow & Co.*, for *F. A. Selborne Stringer*, Trowbridge; *Prestons*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MERIDEN AND SOLIHULL ASSESSMENT COMMITTEE AND ANOTHER v. TYACKE

March 30, 1950

Rating—De-rating—Agricultural land—"Land used as . . . pasture ground only"—Removal and sale of turf—Cattle allowed to graze on land meanwhile—Rating and Valuation (Apportionment) Act, 1928 (18 *and* 19 *Geo.* 5, *c.* 44) *s.* 2 (2)—*Local Government Act*, 1929 (19 *Geo.* 5, *c.* 17), *s.* 67 (1).

CASE STATED by the rating appeals committee of Warwickshire Quarter Sessions.

A proposal was made by a farmer, Richard Stanley Tyacke, for the removal of a hereditament, namely, certain land occupied by him, from the valuation list on the ground that it was agricultural land within the meaning of s. 2 (2) of the Rating and Valuation (Apportionment) Act, 1928, and, accordingly, de-rateable. The proposal was objected to by the rating authority, the Meriden Rural District Council. The Meriden and Solihull Assessment Committee upheld the objection. The farmer appealed to quarter sessions, where the following facts were established. The farmer found that one of his fields was infested with parasites, and in order to get rid of these, he decided to cut and remove the turf and then re-sow the field. He sold the turf to a contractor, who eventually removed it. In the meantime the farmer's full-grown cattle were allowed to come on to the field and feed on so much of the turf as had not been taken away. Quarter sessions, by a majority, found that the field was pasture ground only, and, accordingly, de-rateable. The assessment committee and the rating authority appealed to the Divisional Court. In s. 2 (2) of the Rating and Valuation (Apportionment) Act, 1928 "agricultural land" is defined as "any land used as arable meadow or pasture ground only . . ."

Held, that the finding of quarter sessions could not be supported and that the Case must be remitted to them with an intimation that the field was not de-rateable.

Counsel: *Rowe*, K.C., and *J. Ramsay Willis*, for the appellant assessment committee and rating authority; *Lloyd-Jones*, K.C., and *G. F. Sunderland*, for the respondent farmer.

Solicitors: *Sharpe, Pritchard & Co.*, for *W. Maurice Mell*, Solihull; *Ellis & Fairbairn*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

GOTT v. CHISHOLM

March 30, 1950

Road Traffic—Driving while uninsured—Special reasons for not ordering disqualification—Car driven only a few yards—Damage to premises—Acceptance of liability by insurance company—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 35 (2).

CASE STATED by St. Albans justices.

At a court of summary jurisdiction at St. Albans an information by the appellant, James Goth, a superintendent of police, was preferred, charging the respondent, Kenneth Chisholm, with driving a motor car without there being in force in respect of it a policy of insurance against third party risks, contrary to s. 35 (1) of the Road Traffic Act, 1930. The respondent, a youth, drove a motor car a few yards across a highway and on a pavement in a frequented street. He intended to drive the vehicle into his employers' premises, but he drove instead into another person's shop, doing considerable damage. There was no policy of insurance against third party risks in force in respect of the driving by the respondent, but liability for the damage was accepted by his employers' insurance company. The justices convicted the appellant, but held that special reasons existed which justified them in refraining from disqualifying the respondent. The superintendent of police appealed, contending that no such special reasons existed.

Held, that no special reasons existed, and that the case must be remitted to the justices with directions to disqualify the respondent for twelve months from the date of conviction.

Counsel: *Adrian Head*, for the appellant. The respondent did not appear.

Solicitors: *Pothecary & Barratt*, agents for *Anderson Davis & Metcalfe*, St. Albans.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

CIVIL ESTIMATES, 1950-51

Class IV, Education and Broadcasting

Nearly all the services comprised in this class show increases in their net estimates for the new financial year. The Ministry of Education require an additional £6,340,000, raising estimated requirements from £186,340,000 in 1949-50 to £192,680,000 in 1950-51. Principal items included in an increase of £499,000 for grants for science and the arts are £107,000 for the Medical Research Council and £248,000 for the Agricultural Research Council. Non-recurrent grants of £8,877,000 in 1950-51, compared with £4,333,000 in 1949-50, are mainly responsible for an increase from £17,671,000 to £23,419,000 in respect of grants in aid and other assistance to various universities, colleges and other educational institutions. Payment over to the British Broadcasting Corporation of increased net revenue from receiving licences is reflected in an increase of £3,135,000 in respect of the broadcasting service; £4,685,000 is estimated for payments to the Corporation in 1950-51 in aid of overseas services and other services performed for Government Departments. The two largest items in an increase of £5,559,000 for the Festival of Britain are £1,200,000 for construction of buildings and £906,800 for display construction, preparation, transport and arrangement of exhibits. Maintenance of proportional relationship with England and Wales enters into an increase, from £21,953,000 to £23,777,000 between 1949-50 and 1950-51, in the general aid grants payable to education authorities and other bodies of Managers in Scotland.

Details relating to the additional £6,340,000 provided for in the Ministry of Education estimates are given in the annual memorandum (Cmd. 7908) presented to Parliament. Amounts paid in grants to local education authorities are expected to rise by £11,574,000 to £163,467,000 in 1950-51, from £148,893,000 in 1949-50 and £17,095,000 is provided for pensions to teachers, against £15,937,000. Offsets to these increases include a decrease from £15,840,000 to £11,766,000 in scholarships and maintenance allowances, embracing substantial reductions in the emergency and special training of teachers (down by £1,066,000 in 1950-51) and in the further education and training scheme (down by £3,450,000). Repayments by the Ministry of Education to the Ministry of Works in respect of expenditure incurred in providing buildings and equipment for school canteens are estimated at £2,784,000 in 1950-51, compared with £4,354,000 in 1949-50.

Expenditure from the National Exchequer and local rates combined on education within the purview of the Minister of Education is estimated to increase from £277 million in 1949-50 to £292 million in 1950-51. Rather more than one-half of the net increase will fall on local rates, which will bear nearly £99 million in respect of 1950-51, against approximately £90 million for 1949-50. As an average over all local education authorities in England and Wales, the additional £9 million is equal to a rate of 7*d.* in the £. Increases are shown under ten of eleven headings setting out estimated expenditure of local education authorities, other than the employers' contributions towards teachers' superannuation, totalling near £260 million for 1950-51, against an estimate of about £240 million for 1949-50. Provisional totals of actual expenditure, including employers' contributions towards teachers' superannuation, in 1947-48 and 1948-49 are given as £192 million and £218 million respectively. Provision for primary schools (including nursery schools) in 1950-51 is £89 million (up by £4½ million) and for secondary schools £65 million (up by £4¾ million), but the estimate for provision of milk and meals in 1950-51 is nearly similar, at about £27½ million, to that for 1949-50, which may mark the termination of successive substantial increases; supply of milk costing about £7½ million in 1950-51 is borne in the Vote of the Ministry of Food.

CLASS V, HEALTH, HOUSING, TOWN PLANNING, ETC.

An estimate of £845 million for this Class in 1950-51 exceeds the final estimate of £826 million (including supplementary estimates of £101 million) for 1949-50 by the comparatively small net amount of

£19 million. A considerable item included in a net increase of £22½ million for the national health service in England and Wales is an additional £14¼ million, making £226¼ million for hospital, specialist and ancillary services in England. Advances to regional hospital boards in respect of maintenance and running costs, including specialist services, are estimated to total £183 million in 1950-51, against £175 million in 1949-50; advances to boards of governors of teaching hospitals rise from £11 million in 1949-50 to £13½ million in 1950-51, and payments to the Ministry of Pensions for supply renewal and repair of surgical appliances show an increase from £2¼ million to £4 million. Exchequer grants to local health authorities, in respect of services such as care of mothers and young children, health visiting, ambulance services and domestic help are estimated to require £16¼ million in 1950-51, compared with £13½ million in 1949-50. Pharmaceutical services covering the supply of drugs, medicines and appliances show a decrease from £29½ million in 1949-50 to £26¼ million in 1950-51; payments under arrangements made with dental practitioners are expected to be slightly below instead of slightly above £40 million, but the supplementary ophthalmic services for the testing of sight and supply of optical appliances are expected to require a further £3 million to bring the provision for 1950-51 up to £24½ million. Payments in respect of compensation for loss of right to sell medical practices, relating to England and Wales, are estimated, to decrease from £7,165,000 in 1949-50 to £5,315,000 in 1950-51, fewer amounts being shown for lump sum payments on retirement, death, etc., and for interest on outstanding compensation.

Apart from certain grants made by the Welsh Board of Health, annual grants to local authorities towards housing expenses under the Housing (Financial and Miscellaneous Provisions) Act, 1946, as amended, are estimated at £9,500,000 in 1950-51, in place of £7,420,000 in 1949-50. A new item in the estimates provides £50,000 for the purposes of the Housing Act, 1949, ss. 15, 19, 25 and 31, in respect of improvement of housing accommodation. Substantially reduced provision is made for capital grants to local authorities, under the Act of 1946, s. 17, in respect of the additional cost of erecting houses by non-traditional methods; the amount of £900,000 estimated for 1950-51 compares with £7,875,000 estimated for 1949-50. Payments to local authorities in respect of the provision of accommodation for persons inadequately housed, including administration expenses, are expected to rise from £15,540,000 in 1949-50 to £16,480 in 1950-51.

Somewhat similar total estimates for 1949-50 (£49,550,000) and 1950-51 (£48,500,000) for Exchequer grants to local authorities under the Local Government Act, 1948, part I, cover differences of detail. Exchequer Equalization Grants under the Act of 1948, s. 2, are estimated to increase from £42,525,000 in respect of the year 1949-50 to £46,925,000 in respect of 1950-51, and amounts payable on account during the year show a proportionate increase. The major cause of a net decrease of £1,050,000 in total is a reduction in the amount payable in 1950-51 in respect of previous years; in 1950-51 this item accounts for £6,475,000, compared with £11,475,000 in 1949-50.

In the estimate of the Ministry of Labour and National Service for 1950-51, a higher amount of £675,000 (£350,000 in 1949-50) is shown for grants to local education authorities, towards administrative expenses of those who are authorized by means of a scheme under the Employment and Training Act, 1948, ss. 10 and 11, to administer the youth employment service applicable to young persons under the age of eighteen years.

Exchequer grants to local authorities under the Town and Country Planning Act, 1947, continue at a modest figure, which will be £285,000 in 1950-51, against £200,000 in 1949-50. The principal increase provided for is in grants in respect of the acquisition and clearing of land for comprehensive re-development and of derelict land under the Act of 1947, s. 93; these grants are estimated to rise from £100,000 in 1949-50 to £250,000 in 1950-51. Grants to development corporations established under the New Towns Act, 1946, towards expenditure other than on capital account, show a decrease from £275,000 in 1949-50 to £80,000 in 1950-51. A new item in the estimate for the Ministry of Town and Country Planning allows for grants to local authorities under the National Parks and Access to the Countryside Act, 1949, £5,000 in respect of expenditure incurred under s. 97 in national parks and areas of outstanding natural beauty, and £5,000 under s. 98 on long distance routes.

NOTICES

The next court of quarter sessions for the city of Coventry will be held at the County Hall, Coventry, on Wednesday, April 26, 1950, at 11 *a.m.*

The next court of quarter sessions for the borough of Shrewsbury will be held on Monday, May 1, 1950, at The Shirehall, Shrewsbury, at 11 *a.m.*

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

ENFORCEMENT NOTICES

I was very interested to read in your publication at p. 105 *ante*, a report of a case taken before the Gowerton Magistrates in respect of the failure to comply with an enforcement notice served by the Gower Council. I have always been under the impression that the provisions of ss. 23 and 24 of the Town and Country Planning Act, 1947, divide enforcement action after the Enforcement Notice has expired into two categories. Where there is contravening development the planning authority's remedy appears to me to be the right to enter on the land and demolish the offending building. On the other hand, where there is a contravening use or a breach of a conditional consent, then the planning authority's remedy lies in making application to the court for a fine in respect of the failure to comply with the terms of the enforcement notice; and if the court order the use to cease or the condition to be complied with and the court order is contravened, the planning authority have the right to apply a second time to the court for a day to day penalty. These two remedies appear to be quite distinct and I have always been under the impression that the council cannot prosecute in the first instance to which I have referred, *i.e.* where the contravention relates to a building or some physical works which they can demolish.

I should be exceedingly grateful if you will give me your observations on this matter since, if the application of the provisions of the Act by the Gowerton Magistrates' Court is the correct one I should be happy to apply this remedy in several instances where it is obviously either difficult or embarrassing for the Council to rely solely upon their power of demolition.

Yours faithfully,
D. C. DURRANT,
Clerk of the Council.

Rural District Council of Uckfield,
Council Offices,
Beacon Road,
Crowborough, Sussex.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

ENFORCEMENT NOTICES

Would R.L.H., the writer of the Comment on No. 15 in the series "Law and Penalties in Magisterial and Other Courts" kindly throw a little more light on what, according to the facts set out, seems a peculiar decision of the Gowerton magistrates.

An enforcement notice had apparently been served on the defendant under s. 23, Town and Country Planning Act, 1947, requiring him to *take down and remove* some unauthorized works and the defendant had failed to comply with it. How could the defendant subsequently be *fined* for failing to comply with the notice? Surely the appropriate and only remedy for the local planning authority was to remove the works themselves and recover the cost from the defendant (s. 24 (1)). It is only disobedience to a notice requiring the *discontinuance of a use or compliance with a condition* that can lead to a person being fined (s. 24 (3)). The two procedures are generally regarded as being quite distinct, and it looks as if either the report of the case is at fault or the justices were wrong. A further note from R.L.H., might enlighten others as well as

Yours faithfully,
J. D. SCHOOLING.

Shirehall,
Worcester.

[Our contributor, R.L.H., writes:

"I am indebted to Mr. Schooling and Mr. Durrant for their helpful observations which correctly expound the effect of ss. 23 and 24 Town and Country Planning Act, 1947.

I regret that my comment upon the case was so condensed that in referring to the fact that under s. 24 a fine of £50 could be imposed upon summary conviction I did not add, as is the fact, that only contraventions of enforcement notices as to *user* may be punished in this way and that other contraventions must be dealt with by way of

direct action on the part of the local planning authority who may themselves take the steps required by the Notice and, thereafter, recover from the owner the expense to which they have been put.

I have been in further communication with Mr. Harris to whom I was indebted for the original report and I have verified its accuracy.

It appears that the Clerk to the Gower Council who appeared for the prosecution argued that the defendant as a consequence of the erection of unauthorized works was using the premises contrary to the provisions of the Act and that it followed that the notice served by the council requiring him to take down the buildings was the same as a notice to discontinue a specified user and that this submission was accepted by the justices.

I feel that it would be improper to comment directly upon this decision but it is, perhaps, permissible to say that other local planning authorities would be ill-advised to assume that a similar submission made before another bench would be accepted."—*Ed. J.P. and L.G.R.*].

REVIEWS

Mozley and Whiteley's Law Dictionary. Sixth Edition. By P. Asterley Jones and J. C. Fisher. London: Butterworth & Co. (Publishers) Ltd. Price 17s. 6d.

This is the sixth edition of a well-known work. In it the learned editors have brought the fifth edition up to date, without burdening it with all the new statutory definitions which have been enacted since the last appeared. The most important of the new definitions have been selected: by this process of selection, it has been possible still to find space to preserve many entries relating to the older law, which may sometimes puzzle the practitioner, especially the young practitioner, today. The work thus presents a nice balance, between the long entries such as "unlawful assembly," and those which, having a historical or antiquarian interest rather than a modern one, are noted more briefly, such as "asportavit." Some topics receive relatively full treatment, such as "curtain clauses," "manor," and "satisfaction." Others are given just sufficient information to indicate, to the possessor of the book, what a word means, or where information may be found. Here a particularly valuable feature is the inclusion of a variety of Scottish legal phrases. These often occur, for example, in judgments in the House of Lords which have come forward from the Scottish Courts, and, in the absence of a dictionary, may be an impediment to the understanding of the judgment by an English lawyer. The work does not pretend to rival the large dictionaries such as *Stroud*, or the still growing (and increasingly useful) *Dictionary of Words and Phrases Judicially Defined*. It is, indeed, of no more than octavo size, and comprises less than four hundred pages. In those pages, printed in double column, with clear headings and adequate spacing, there is a remarkable amount of information, ranging from the stock Latin and imitation Latin phrases to be found in the old reports, to live particulars about rights, remedies, and practice.

The book is small enough to be carried in the travelling bag or even in the pocket, and complete enough that the practitioner is pretty sure to find in it the clue to the peculiar or obscure expression he is likely to come across, especially at a time when, or in a place where, he has not access to one of the larger dictionaries or to a library.

The Digest of South African Case Law 1934-1945. Two Volumes. By Percival Frere-Smith and Graeme Duncan. Cape Town and Johannesburg: Juta & Co., Ltd. Price: £10 10s.

This is another of the publications, now made available in Great Britain by Messrs. Juta, the leading South African law publishers. As we have said previously, about other of their publications, we unfortunately lack adequate knowledge of South African law to appraise its accuracy, but we can appreciate the clarity and apparent completeness of the treatment by the learned authors, and also the excellent printing and quality of the production. In appearance, the work is much like the *English and Empire Digest*. Topics are dealt with in alphabetical order of main headings, and the most important of these, such as "company," are divided under clearly differentiated sub-headings. "Company," for instance, has sixteen main sub-headings and several of these are further divided. We do not know how long there have been South African digests of case law, but we observe that the first edition of such a digest was published by Messrs. Juta forty years ago, so that it looks as if, whatever may have existed in Cape Colony last century, a digest of the case law of the Union began immediately after its creation. To this, the present work, in two volumes, is termed a supplement. In the preface, the learned authors who are advocates of the Supreme Court, and one is also an English barrister, remark that they have extended the treatment used in earlier volumes by giving rather fuller statements of the facts upon which cases were decided. This brings the entries very closely into line with the model established by Messrs. Butterworth, in the *English and Empire Digest*, and we should suppose that the "country practitioners" for whose benefit these statements of fact are said to be included, and also busy town practitioners who may not have a particular set of law reports at hand, will usually find what they need for practical purposes. The headings are naturally, to some extent, the same as are used in a comparable English work, but there are some topics needing special or fuller treatment, such as "coloured person" or "cession," and this is duly to be found. It is fascinating for the English lawyer to pursue some of the topics due to Roman Dutch law, or to the sociological implications of a mixed population, and it is also instructive to examine the case law of South Africa under such headings as "insurance" and "defamation," whilst there are (as would be expected) a number of decisions which could hardly have arisen in this country, under the heading of "international law." In the nature of things, we suppose, the market in England for a work costing ten guineas, dealing with the law of one of the great Dominions, must be limited, but English lawyers who have South African professional connexions, or are concerned with the tuition of those South African students in this country who are proposing to return to South Africa, will wish to possess the book.

Police Charges. Guide to the Wording of Police Charges for the use of Station and Other Officers. By H. Hanbury. London: Sweet and Maxwell, Ltd. Price 10s.

This is a practical book by a practical man, an inspector in the Metropolitan Police. Many a busy station officer will find this collection of over 600 specimen charges with its full alphabetical index a handy companion. Police officers are often short of text books, and the wonder is that they nearly always frame their charges correctly. Sometimes they must be involved in a good deal of research, and this small volume will save a great deal of time. Where necessary, footnotes are added to the charges or cross-references given. The book receives a good send off through a brief foreword in commendation by Sir Harold Scott. We also recommend it.

PERSONALIA

APPOINTMENTS

Mr. Ernest William Haden of the firm of Messrs. Ernest W. Haden and Stretton of Walsall has been appointed clerk of the peace for the county borough of Walsall. He takes the place of Mr. Victor Crooke who is retiring after holding the office for twenty-three years.

Mr. Sydney Astin, assistant solicitor to the county borough of Burnley, has been appointed deputy town clerk of the borough of Malden and Coombe. Mr. Astin has been with the Burnley corporation since 1928 and was admitted last year. During the war he served in the Royal Artillery, being demobilized with the rank of captain.

OBITUARY

Sir Michael Myers, chief justice of New Zealand from 1929 to 1946, died in Wellington on April 8. He was created a barrister in 1922 and prior to this was the first lawyer to set up as a barrister. He was for a time Crown Prosecutor in Wellington. He was made an Honorary Bencher of the Inner Temple in 1944 and he represented New Zealand on the United Nations Committee of Jurists in Washington and San Francisco in 1945.

NEW COMMISSIONS

NORFOLK COUNTY

Mrs. Dorothy Aldiss, Fairbourne, Norwich Road, E. Dereham.
John Alley, Roydon Hall, King's Lynn.
Mrs. Sybella Jane Bailey, Cavick House, Wymondham.
James Bartholomew, Saham Hall, Thetford.
Mrs. Emma Elizabeth Bartram, 7, Central Road, Cromer.
Lieut.-Col. John Hamilton Boag, Lings End, Lt. Fransham, E. Dereham.
The Rev. Donald Evans Brown, The Rectory, Wells next Sea.
Mrs. Charlotte Christina Cann, Waverley, Boundary Lane, Thorpe St. Andrew, Norwich.
Sydney John Cole, The Lodge, Winfarthing, Diss.
Mrs. Lettice Elizabeth Evelyn Colman, Framingham Chase, Norwich.
William Harry Alma Crane, Manor House, West Bradenham, Thetford.
Mrs. Dorothy Margrate Crawley, Honington House, West Walton, Wisbech.
Gerald Walter Anthony Denny, Gurney's Manor, Hingham.
Arthur Ernest Farrowm, 4, "S" Corner Lynn Road, Walsoken, Wisbech.
Algernon William Garrod, Manor Farm, Bintry.
Cecil John Gunstead, 17, Council Houses, Feltwell, Thetford.
Paul Lancelot Hawkins, Manor Farm, Shouldham Thorpe, King's Lynn.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 28.

THEATRE OFFENCES

Two comedians appeared before the Sheffield justices on February 28, 1950, charged jointly under s. 15 of the Theatres Act, 1843, in that they, on certain dates, unlawfully for hire acted parts of a new stage play before such parts had been allowed by the Lord Chamberlain. Two charges were preferred.

The theatre licensee and the manager were also jointly charged under the same section for unlawfully causing to be presented parts of a new stage play before such parts had been allowed by the Lord Chamberlain, and the production manager was also charged with two offences under the same section of unlawfully presenting parts of a new stage play before such parts had been allowed by the Lord Chamberlain.

Counsel for the Director of Public Prosecutions stated that the play in question was a pantomime which was licensed in December, 1948, and as a result of complaints about the performance a police officer reported alterations in the dialogue and the introduction of new characters.

In the case before the court, said counsel, there were certain indecencies and certain political references, but the bench might consider them comparatively mild.

The theatre licensee was in America at the time of the alleged offences but was responsible for presenting the pantomime.

A representative of the Lord Chamberlain's department stated that in the presentation of a pantomime the slightest variation from the script previously approved was an offence, but in practice one or two allusions to topical matters in one evening might be permissible, although a comedian would introduce them at his own risk, and as a rule the Lord Chamberlain did not take action under such circumstances unless the variations were indecent. In the cases before the court the comedian used words which had actually been cut out by the Lord Chamberlain when he had previously considered the script.

For the defendants, who all pleaded guilty, it was stated on behalf of the production manager that he was really responsible and that he was willing to accept the blame for the whole affair. In his opinion the variations had seemed trivial and not necessary for him to submit to the Lord Chamberlain. He added that a good comedian made many changes as he had to watch the daily papers to keep up to date.

The other defendants submitted that a technical offence only had been committed.

The bench fined each of the comedians a total of £5 and the theatre licensee and the manager were each fined a total of £10. The production manager was fined £15 on each of the two charges and ordered to pay £10 15s. costs.

COMMENT

Section 15 of the Act contains, as will have been appreciated by reading the above report, numerous provisions all of which aim at prohibiting an unauthorized stage play. The maximum penalty which may be imposed for an infringement of the section is £50, but prior to 1925 there was an additional provision that every licence by or under which the theatre was open in which an offence under s. 15 was committed should become absolutely void.

Section 43 of the Criminal Justice Act, 1925, annulled this provision, but provided that a convicting court *may*, in addition to imposing a pecuniary penalty, order that the licence of the theatre in which an offence is committed shall become void or suspended for a specified period. The view was expressed by the late Sir Rollo Graham Campbell, then chief magistrate, at Bow Street Magistrates' Court in January, 1935, that the theatre licensee ought to be given an opportunity of being heard against the suspension or abolition of his licence, and in a later case the same year Mr. Dennett, also sitting at Bow Street, endorsed Sir Rollo's view and in the case before him the licensee, who was not charged with the commission of an offence under s. 15, was summoned to show cause why the theatre licence should not be voided or suspended.

It may seem to some readers a little hard that the theatre licensee, who was in America at the time of the alleged offence, was convicted, but the law upon this point is perfectly clear and was confirmed in *Grade* v. *Director of Public Prosecutions* (1942) 106 J.P. 228. It will be remembered that in that case it was decided that where a new stage play was departed from by the addition of certain words and passages, the presenter is liable where he is responsible for the presentation, even though absent on the occasion of its production and, it was pointed out by Mr. Justice Humphreys, it is unnecessary to prove scienter. It was, however, said in that case that the mere unauthorized introduction of some extraneous expression or "gag" would not render the presenter liable.

(The writer is greatly indebted to Mr. Leslie M. Pugh, clerk to the Sheffield justices, for information in regard to this case.) R.L.H.

No. 29.

ONE TRAILER OR TWO?

A member of the Caravan Club was charged before the Highgate justices on December 5, 1949, with drawing two trailers behind a private car contrary to s. 18 of the Road Traffic Act, 1930.

Evidence was given that the defendant was, at the time he was stopped by the police, towing an ordinary two-wheeled caravan behind his private car, but was using a device called the "Wemsydel Caratow," which consists of a pair of pneumatic tyred "Dolly" wheels fixed to a triangular chassis with a towing bar which is coupled up to the towing attachment on the back of the car. Mounted centrally on the chassis is a large ball pivot. To this is fitted a socket fixed to the towing bar of the caravan, and when all is coupled up it appears as though the car is towing a four-wheeled trailer. The device is designed to prevent the "bouncing" and "snaking" which are caused when the towing bar of a heavy caravan is attached direct to the chassis of a car.

For the prosecution it was stated that the justices might find that the car was towing (*a*) two two-wheeled trailers or (*b*) one four-wheeled trailer, or (*c*) one two-wheeled trailer and a towing device which did not count, but the prosecution's submission was that the car was towing two two-wheeled trailers.

The prosecutor pointed out that the "Dolly" was not part of the caravan or of the car, but a separate entity which was wheeled and which carried three to five hundredweights of the caravan's weight. It was, therefore, he suggested a vehicle and a vehicle drawn by a motor vehicle was a trailer.

For the defendant it was submitted that the "Dolly" was not a trailer nor did it convert the caravan to a four-wheeler.

It was an aid to towing, a mere accessory, a towing link which had its own wheels.

The chairman, after the bench had retired, stated that in their view the defendant had been driving a private car drawing one two-wheeled trailer and that the "Dolly" was an attachment on wheels which did not constitute a two-wheeled trailer a four-wheeler, and the summons was accordingly dismissed.

COMMENT

The writer is informed by Mr. A. J. A. Hanhart, solicitor, London, to whom he is greatly indebted for the report and particularly for the technical information given, that this case is of considerable interest to motorists and in particular to owners of trailer caravans and in these circumstances it has been thought right to include the report, although it is appreciated that the number of persons interested may be limited. R.L.H.

PENALTIES

Bangor—December, 1949—acting in a manner likely to cause a breach of the peace (two defendants)—bound over for twelve months. Two youths concealed themselves at night in the grounds of a female students' hostel in order to watch the occupants through uncovered windows.

Dudley Juvenile Court—February, 1950—street gambling (five defendants)—each fined 5s. Five boys aged between fourteen and sixteen were found gambling clustered around the foot of a lamp-post.

Bangor—February, 1950—front light of motor car not conforming to "non-dazzle" regulations—fined 30s.

Chepstow—February, 1950—stealing a purse and two postal orders value 6s.—fined £5. To pay £2 6s. 8*d*. costs. Defendant, the wife of a village policeman, stole the articles which had been handed in to her to give to her husband.

Caernarvon—December, 1949—inscribing obscene writing on a building—discharged absolutely. To pay 4s. costs. Defendant, a boy of twelve, chalked obscene words on a garage door.

Leicester—February, 1950—assault—one month's imprisonment. Defendant, a butcher, struck a food enforcement officer on the side of the head with a butcher's chopper when the officer looked into the butcher's refrigerator.

Caernarvon (Borough)—January, 1950—committing an indecent act in a public place (urinating)—fined 10s. Defendant, of no fixed abode, pleaded that he was destitute and unable to pay; magistrates remitted half the fine whereupon his wife, who was in court, produced a £1 note to pay the balance!

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption of Children—*Birth certificate in shortened form—Reference in form of consent to such certificate—Evidence of identity.*

Can the shortened form of birth certificate mentioned in the Birth and Deaths Registration Act, 1947, be used in connexion with applications for adoption?

It will be observed that in the form of consent (Form 2 of S.I. 1949 No. 2397) the consenting party has to identify the infant as being the person to whom the birth certificate marked A relates. There is nothing in the shortened form of certificate to show who are the parents and, consequently, when the consenting party is the father or mother there is nothing to identify the certificate with such consenting party. It is submitted that whilst the shortened form of certificate is useful on all occasions where only evidence of age is required it is not sufficient where evidence of identity is required.

I shall be glad to have your opinion on this point. S.B.C.

Answer.

The written consent of the parent, duly attested, is evidence that he or she consents to the adoption of the infant referred to in the birth certificate annexed to the form of consent. It is sufficient, in our opinion, to annex the shortened form of certificate, but the attested form is evidence of consent only, and not of the identity of the child referred to, as the child before the court, or as the child handed over to the adopters. That has to be "proved to the satisfaction of the court" if the child is to be described as identical with the child named in the birth certificate. There must, we think, be oral evidence on this point, and of course the best evidence is that of the mother.

If for any reason the court is not satisfied with the short form of birth certificate it is open to the court to ask for production of the full certificate, but this is not likely to be the case very often.

2.—Bastardy—*Infant mother obtains order—Appeal allowed with costs—Recovery of costs.*

A is summoned by B alleging that he is the father of B's child. An order is made by the justices but on appeal the order is quashed and the girl is ordered to pay the costs of appeal. These costs are to be recovered as a civil debt. It is now learnt from the defendant's solicitors that the girl is a minor.

Can the costs of appeal be recovered summarily as a civil debt by proceedings against a minor? S.A.B.

Answer.

We know of no authority for saying that such costs cannot be recovered by ordinary civil debt procedure and therefore we think they may be enforced by distress or a judgment summons may be issued.

On costs against infants, generally, 17 *Halsbury* 715 may be consulted.

3.—Club—*Proposal to buy "lock, stock and barrel" and remove to unlicensed residential hotel—Whether permissible.*

Early this year an application for the removal of a licence to sell "drinks with meals" at an hotel was refused, due to police opposition. Since then the hotel has been closed and is now re-opened with the same proprietor but having had a complete refurnish and change in staff. It is desired now to sell drinks to the occupiers as members of a club under the usual club laws, but to avoid any application to the police it is suggested that an existing licensed club should be purchased lock, stock and barrel.

Would you please advise on:—

(1) As to whether or not a club licence may be transferred from one address to another without police permit?

(2) If the answer to (1) above is no, may the club stocks of beer, wines, and spirits be stored on any premises other than the club house, in other words may the club have two addresses, one or both dealing with the sale of drinks?

(3) Any advice or references to cases to study generally on the matter would be much appreciated. NUR.

Answer.

We must point out that there is no such thing as a "club licence" and a properly so-called "registered club" may not "sell" intoxicating liquor but merely supply to its members intoxicating liquor, the ownership of which is already in the member supplied jointly with all other members of the club (*see* Licensing (Consolidation) Act, 1910, ss. 91, 92; *Graff* v. *Evans* (1882) 46 J.P. 262). A club is an association of members bound by a common object and regulated by rules of their own making: such a club, if it occupies premises, and supplies intoxicating liquor to members and their guests, must be registered: but registration does not constitute the club licensed premises or authorize any sale of intoxicating liquor which would otherwise be illegal (Licensing (Consolidation) Act 1910, s. 91). Purchase of the premises occupied by the club and of the possessions of the club "lock, stock and barrel" will not operate as a transfer of the club registration.

(1) A club registration may be transferred when the club changes its address—change of address does not matter if the club remains the same.

(2) Does not arise.

(3) We refer our correspondent to *Paterson's*, 57th edition, at pp. 756 *et seq.* and *Stone*, 81st edition, at pp. 708 *et seq.*, or any text-book on club law.

4.—Club—*Meetings of twenty-four members and guests at president's house—Whist drives for money prizes as a club activity—Whether lawful.*

The local petroleum office has a sports and social club open to members of the staff on the payment of an annual fee. As part of the recreational facilities a number of the members of the club are allowed to attend at the president's house and join in a whist drive held thereat. The number of the invitees is confined to twenty-four, inclusive of the relatives or friends of members who are allowed to bring one guest with them. The function is held at the president's house because of the lack of space at the board office. 1*s.* 6*d.* is paid for each function and this sum is paid to the treasurer of the club. Refreshments are provided by the president and monetary prizes ranging from £1 to 2*s.* 6*d.* are given to prize winners.

We shall be glad to receive your valued opinion as to the following matters:—

1. Do you consider that entertainments' duty should be paid on the tickets issued?

2. Are we right in assuming that no justices' licence is required as there is no music and dancing on the premises?

3. As the whist drive may be held once every fortnight is it possible that the authorities might interpret the holding of this function for monetary prizes as a breach of the Betting Act, 1853?

4. Any other consideration you consider to arise. N.A.S.

Answer.

1. No.

2. No justices' licence is required.

3. It is possible. The law is now well settled that whist drives for money prizes are illegal (*see Bennett* v. *Ewens* (1928) 92 J.P. 120).

5.—Licensing—*Consuming after hours specified in occasional licence—Whether "party organized for gain" within the meaning of the Licensing Act, 1949, s. 24.*

The council of this county borough organize public Saturday night dances in the town hall and a licensed bar is provided by an outside publican. Both the dances and the bar show a profit. The town hall is on numerous occasions also hired to persons organizing public and private dances and other functions when the organizers arrange for a licensed bar. At any time when intoxicating liquors are sold an occasional licence is obtained from the justices, usually from 8 *p.m.* to 10 *p.m.* The dances generally finish at 11.45 *p.m.* and it is not unusual for guests to purchase a quantity of liquor before the bar closes for consumption afterwards and, in some cases, to bring liquor into the dance for consumption after licensed hours. Referring to P.P. 9 at 101 J.P.N. 221, it would seem that in the past no offence was committed in such circumstances as the premises ceased to be licensed when the occasional licence expired. The Licensing Act, 1949, s. 24, is directed to prohibiting the consumption of intoxicating liquor outside permitted hours at any party organized for gain, and I should be glad to have your opinion:—

1. Whether drinking in the town hall should now be strictly confined to licensed hours?

2. If so, would customers who bring their own refreshment on to the premises be in any different position from those who purchase it at the bar?

3. If drinking is to be confined to licensed hours, would it be proper

to allow a reasonable period after closing time for drinkers to empty their glasses ?

4. Generally. NTH.

Answer.

The proviso to subs. (1) of s. 24 of the Licensing Act, 1949, removes from the operation of the section, *inter alia*, a party in respect of which an occasional licence has been granted. The party continues, in our opinion, to be the same party even after the occasional licence granted in respect of it has terminated ; therefore such a party as is mentioned by our correspondent is untouched by s. 24 of the Licensing Act 1949.

6. **Magistrates**—*Practice and procedure*—*Appeal to court of summary jurisdiction*—*Town and Country Planning Act*, 1947, s. 23. Has the plaintiff or appellant, as the case may be, a definite right to open up the case to the justices or can the justices decide that the facts shall be presented to them by the defendant or respondent ?

This question arose recently upon an appeal from an enforcement order under the Town and Country Planning Act, 1947, the justices being of opinion that the case should be opened to the court by the local planning authority, the respondents in the proceedings. (*See the Journal of Planning Law*, June, 1949, p. 363). SIG.

Answer.

If, as we assume, this is an appeal to a court of summary jurisdiction against an enforcement notice, the procedure is, we think, regulated by the Summary Jurisdiction Rules, 1915, r. 58. The appellant becomes the complainant, and the respondent becomes the defendant. The complainant's case is to be heard first, in accordance with the provisions of s. 14 of the Summary Jurisdiction Act, 1848.

7. **National Assistance Act, 1948**—*Voluntary organizations*—*Contributions*.

Section 29 of this Act gives power to local authorities to make arrangements for promoting the welfare of persons who are blind, deaf, dumb, and crippled, etc., such arrangements to be carried into effect in accordance with a scheme. My council have not yet made such a scheme relating to deaf and dumb and crippled persons. Section 30 provides for the employment as agents for the purposes of the scheme of a voluntary organization, subject to certain conditions. Subsection (2) of the section gives a local authority power to make contributions to the funds of any such organization as is referred to in subsection (1).

Will you kindly state whether in your opinion :—

(a) Section 30 (2) confers a general power upon local authorities to make contributions to the funds of voluntary organizations registered under s. 41 of the Act, whose object, as referred to in s. 30 (1), is the promotion of the welfare of handicapped persons, or

(b) the power is limited to those voluntary organizations who are employed as the local authority's agents in accordance with a scheme made under s. 29. A.A.A.

Answer.

The better opinion is (a), both upon a grammatical interpretation of s. 30 and upon comparison with parallel powers in the Act.

8. **Rating and Valuation**—*Duplicate assessment*—*Refund of rates for past periods*.

A country mansion is assessed at £200 G.V. and £163 R.V., which values have been in operation since 1929. Recently a proposal for the amendment of the valuation list was made by the occupier and during the hearing before the assessment committee it was discovered that there had been included in the assessment a figure of £10 G.V. in respect of an entrance lodge which had also been separately assessed at the same figure. Rates have therefore been paid twice in respect of the lodge for many years and the occupier is claiming a refund from April 1, 1934. Your advice is required as to whether a refund of rates can legally be made and if so for what periods ? When replying please quote the authority for your decision. A.R.V.D.

Answer.

There is no express authority, but refund is normal where there is a genuine mistake. The decided cases in the text-books are not very helpful ; in our opinion no authority is needed for the proposition that a public body which has erroneously received money has power to repay it. The Local Government Board and Ministry of Health have regularly advised in this sense, even though the accounts in which the receipt was shown had been closed and audited.

9. **Real Property**—*Dower*—*Real Property Act*, 1925—*Sale after widow's death*.

A died in 1867 intestate leaving a widow B and his eldest son C surviving. A, at the date of his death, was seized in fee simple of Blackacre. C entered into possession of Blackacre and maintained his mother B, but dower was never assigned by metes and bounds. C died in 1944 leaving a will appointing executors who have duly proved. B died in 1947. The executors have now contracted to sell Blackacre as personal representatives of C. The purchaser's solicitors argue that on January 1, 1926, the property became vested in the Public Trustee, as they suggest that Blackacre was then held in undivided shares. They require that the beneficiaries should now appoint trustees to join with the executors in selling. My contention is that on January 1, 1926, the fee simple in Blackacre was vested in C subject to B's equitable right to dower, and that, during the joint lifetimes of B and C, C could have sold with B's concurrence to release her right to dower. Should B have refused this, C could have created an *ad hoc* settlement or trust for sale and appointed trustees to receive the purchase money. It seems to me that on C's death the fee simple vested in his personal representatives, who could sell free from B's equitable interest under s. 39 (1) (ii) of the Administration of Estates Act, 1925. It is my view that on B's death the personal representatives became seized of Blackacre in fee simple in possession free from incumbrances and are now able to sell accordingly. A.B.A.

Answer.

With the more obscure learning of real property we do not claim special acquaintance, as with local government and magisterial law, but we are always pleased to give what help we can. We do not think that a doweress receiving income instead of taking land by metes and bounds had in 1925 an "undivided share" in the estate in the sense in which the phrase is used in the Law of Property Act, 1925, or that this proposition is affected by the fact (if it be a fact) that she did not receive an income because her son maintained her. It follows that, in our opinion, the provisions which the purchaser's solicitor had in mind do not apply, and that the dower was converted by that Act into an equitable right. Whatever the status of this right *vis-à-vis* s. 39 (1) (ii) of the Administration of Estates Act, 1925 (a question which does not arise since there was no sale during B's lifetime), it seems to us that the dower has now gone and C's personal representatives can sell in the ordinary way.

The

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OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

CITY OF SALFORD

Children's Officer

APPLICATIONS are invited from men or women for the above position. Applicants must be experienced in social work and the care and welfare of children. A University degree or a diploma in Social Science is desirable but not essential.

Salary £800 rising by two increments of £25 each to £850 per annum.

The appointment will be subject to :—

(*a*) The Conditions of Service of the National Joint Council as adopted by the City Council.

(*b*) The Local Government Superannuation Act, 1937.

(*c*) The passing successfully of a medical examination.

(*d*) The Standing Orders of the Council.

Applications, endorsed " Children's Officer," stating age, qualifications, experience and present position, together with copies of three testimonials, should reach the undersigned not later than May 5, 1950.

Applicants must disclose whether they are related to any member of the Council or senior officer.

Canvassing, either directly or indirectly, will disqualify.

H. H. TOMSON,
Town Clerk.

BOROUGH OF SCARBOROUGH

Appointment of Clerk to the Justices

APPLICATIONS are invited from persons duly qualified under the Justices' Clerks' Act, 1877, for the appointment of whole-time Clerk to the Justices.

Applicants must possess a wide experience of magisterial law and practice, and keeping of Fines and Fees Accounts.

The commencing salary will be £1,000 per annum to be adjusted according to the proposed scale for Justices' Clerks when finally agreed upon. The candidate appointed will be required to devote his whole time to the duties and not engage in any other employment. Office accommodation and staff will be provided together with all necessary books (including law books), stationery, office requisites, etc.

The appointment is subject to the approval of the Secretary of State and to the provisions of the Local Government Superannuation Act, 1937 (and will be determined by three months' notice on either side). The successful candidate will be required to pass a medical examination.

Applications, giving age, qualifications, particulars of experience and the names of two referees to whom reference may be made, must be received, addressed to the undersigned, and marked " Appointment of Clerk to the Justices," not later than May 1, 1950.

CHAS. W. GOODALL,
Clerk to the Justices.

Court House,
Castle Road,
Scarborough.

When replying to advertisers please mention the Justice of the Peace and Local Government Review.

COUNTY OF BERKS

Appointment of (*a*) Assistant Solicitor (*b*) Assistant Committee Clerk

APPLICATIONS are invited for the following appointments :—

(1) Assistant Solicitor, at a salary in accordance with National Conditions (*a*) after admission and on first appointment : APT V (*a*) £550-£610) ; (*b*) after two years' legal experience from the date of admission : APT VII (£635-£710).

(2) Assistant Committee Clerk, salary within APT I-II (£390-£465).

Candidates for appointment (1) should have a sound experience of conveyancing, and previous local government experience although not essential, will be an advantage. The successful candidate must be prepared to undertake advocacy and assist in the general legal work.

Candidates for appointment (2) should possess a knowledge of local authority committee procedure and preference will be given to those candidates who have passed the promotion examination and have a knowledge of Highway Committee work.

The appointments are subject to National Conditions and to the Local Government Superannuation Act, 1937, and the successful candidate must pass a medical examination. Housing accommodation is not at present available.

Canvassing will disqualify and every candidate must disclose whether to his knowledge he is related to a member of the Council or to the holder of any senior office under the Council.

Applications, stating age, full details of experience and qualifications, and indicating clearly for which appointment application is made, together with the names and addresses of two referees, must reach the undersigned not later than May 6, 1950.

H. J. C. NEOBARD,
Clerk of the Council.

Shire Hall,
Reading.

BOROUGH OF HARROGATE

Appointment of Assistant Solicitor

APPLICATIONS are invited from Solicitors for an appointment in the Town Clerk's Department, at a salary in accordance with Grade V(a) of the A.P.T. Division (£550 - £20 to £610 per annum).

The appointment will be subject to (*a*) the Local Government Superannuation Act, 1937 (*b*) the passing of a medical examination (*c*) the National Conditions of Service as adopted by the Council, and will be terminable by one month's notice on either side.

Applications stating age, qualifications and experience, and with the names and addresses of three persons to whom reference may be made, and stating relationship (if any) to any member or senior officer of the Council, must be received by the undersigned within fourteen days of the publication of this advertisement.

Canvassing directly or indirectly will disqualify.

B. R. OSTLER,
Acting Town Clerk.

Municipal Offices,
Harrogate.
April 4, 1950.

COUNTY OF SURREY

Petty Sessional Division of Kingston-upon-Thames

Appointment of Assistant to Clerk to the Justices

APPLICATIONS are invited for the appointment of a whole-time male assistant to the Clerk to the Justices.

Applicants should have general magisterial experience, be capable of taking a court, issuing process and keeping the Justices' Clerk's accounts.

The salary, based on A.P.T. Grade V will commence at £520 per annum rising by annual increments, subject to satisfactory service, to £570 plus London Weighting (£20 or £30 per annum). The appointment will be terminable by three months' notice on either side.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials should be sent to the Clerk to the County Justices, 13 High Street, Kingston-upon-Thames, Surrey, by Saturday, May 20, 1950. Envelopes should be marked " Assistant."

L. R. BELL,
Clerk to the Justices.

13 High Street,
Kingston-upon-Thames, Surrey.
April 17, 1950.

LINCOLNSHIRE

Female Probation Officer

THE Lincolnshire Combined Probation Area Committee, invites applications for the above whole-time appointment. The officer will be assigned to Boston, Spalding and the surrounding areas.

The appointment will be subject to the Probation Rules, 1949, and the Probation Officers (Superannuation) Order, 1948. The salary will be in accordance with the prescribed scale and travelling and subsistence allowances will be paid. The successful applicant will be required to pass a medical examination.

Applications, stating age, education, qualifications and experience, with copies of two recent testimonials, must reach me by May 4, 1950.

H. COPLAND,
Secretary to the Committee.

County Offices,
Lincoln.

COUNTY BOROUGH OF WOLVERHAMPTON

Assistant to Clerk to Justices

EXPERIENCED assistant required in the office of the Borough Justices' Clerk at a salary in accordance with A.P.T. Division of the National Salary Scales, Grade 1 or 2 according to experience. The appointment is subject to medical examination for the purposes of superannuation. Applications, in envelopes endorsed " Assistant " to be sent to the Clerk to the Borough Justices, Town Hall, Wolverhampton.

H. M. FOSTER,
Clerk to the Borough Justices.

Borough Justices' Office,
Town Hall, Wolverhampton.
April 13, 1950.

HAMPSHIRE COMBINED PROBATION AREA

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited from persons who have had experience and training as Probation Officers for the appointment of a full-time Male Officer for the above area. Candidates must be not less than 23 nor more than 40 years of age (except in the case of serving officers).

The appointment and salary will be in accordance with the Probation Rules and the salary will be subject to superannuation deductions. The successful applicant will be required to provide a motor car for which an allowance will be paid in accordance with the County scale for the time being in force, and he will be required to act in the Winchester area and to assist in the liason work of the Higher Courts.

Applications, giving particulars of age, education, present salary, qualifications and experience, with the names and addresses of not more than three persons to whom reference may be made, should be submitted to the undersigned not later than May 6, 1950. Canvassing, either directly or indirectly, will be a disqualification.

G. A. WHEATLEY,
Clerk to the Probation Committee.

The Castle,
Winchester.
April 17, 1950.

CITY OF BRADFORD

Children's Department

APPLICATIONS are invited for the post of Adoption Officer (Male or Female), at a salary in accordance with Grade A.P.T. III of the Scheme of Conditions of Service (£450 × £15 —£495).

The appointed officer will be principally engaged with the work of the Adoption of Children Acts 1926/49 and will be required to assist the Court and Admissions Officers, and generally assist in the work of the Children's Department. Applicants must have a comprehensive knowledge of case work and precis writing and experience, if possible, in adoption and court procedure.

A degree or diploma in Social Studies essential.

The appointment is subject to the Local Government Act, 1937, and the successful candidate will be required to pass a medical examination. Canvassing will disqualify. An applicant who is related to a member or senior officer of the Council must disclose the fact in his/her application.

Applications (no forms issued), stating age, present appointment, qualifications and full details of previous experience, together with copies of two recent testimonials and the names and addresses of two referees, should be sent in envelopes endorsed "Children's Department—Adoptions Officer" so as to reach the undersigned not later than May 3, 1950.

W. H. LEATHEM,
Town Clerk.

Town Hall,
Bradford.

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NATIONAL ASSOCIATION OF LOCAL GOVERNMENT OFFICERS

Assistant Legal Officer

APPLICATIONS are invited from solicitors for the appointment of Assistant Legal Officer on the permanent staff of the Association's Legal Department. The annual salary offered is £885 rising by annual increments of £25 to a maximum of £1,085. Experience of local government law and administration is desirable. Subject to his passing a medical examination satisfactorily, the successful candidate will be admitted to membership of the Staff Superannuation Fund.

Applications, giving particulars of age, education, experience, and the names of two persons to whom reference may be made must reach me by May 8, 1950.

J. H. WARREN,
General Secretary.

1, York Gate,
Regents Park, N.W.1.

COUNTY BOROUGH OF WALLASEY

Deputy Town Clerk

APPLICATIONS from solicitors are invited by May 1, 1950, for the above appointment. Salary £950 to £1,100 by annual increments of £50.

Forms of Application and Conditions of Appointment obtainable from the undersigned.

EMRYS EVANS,
Town Clerk.

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